

JOHN SCOTT THE I EARL OF ELDON

Eldon

# LAW AND LAWYERS;



**Sketches and Illustrations**

OF

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# LAW AND LAWYERS.

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## CHAPTER I.

### LAWYERS IN PARLIAMENT.

Lawyers' Failures in Parliament—Secret of Parliamentary Success—Erskine on Burke's Oratory—Sir Charles Sewell and his Periwig—America a portion of East Greenwich—Serjeant Maynard—Lord Eldon on Fox's East India Bill—Lord Alvanley's Wit—Erskine in Parliament—Lord Mansfield—Lord Ellenborough—Lord Thurlow—Lord Loughborough—Sir S. Romilly—Sir J. Mackintosh—Sir E. Sugden—Mr. Twiss and Lord Brougham—Mr. Pemberton—Lord Denman and Sir Charles Wetherell—Chancellor Jeffreys—Lawyers in the House of Lords—Lawyers excluded from Parliament.

It has been recorded that, in a debate in the House of Commons, on the commercial treaty of 1713, when Sir Richard Steele rose to speak, several members cried out "Tatler! Tatler!" and when he went down the house afterwards, several members were heard to say, "It is not so easy a thing to speak in the house; he fancies, because he can scribble, he is fit to play the orator." This circumstance, as Lord John Russell very appropriately remarks, shows the natural envy of mankind towards those who attempt to obtain more than one kind of pre-eminence. For it is, indeed, more often envy than prudence which has

warned the cobbler not to go beyond his last, and has declared that one branch of knowledge is enough to exhaust all the energies of the human mind.

The House of Commons, it has been said, is strewed with the wrecks of the reputations of eminent lawyers. And the fact is so. But with the wrecks of the reputations not *only* of eminent lawyers; brave generals, accomplished diplomatists, the practical statesman, the scientific speculator, the profound philosopher, the glory of our literature, the pride of our commerce, have severally, and in instances not infrequent or obscure, sullied their laurels, and diminished their fame, by their failures in parliament.

The secret of success in the House of Commons, Lord Abinger has well explained, in a letter to Mr. Robert Mackintosh. He says, "Whatever may be the advantages derived from the division of political men into parties, it is obvious that it must have an important influence upon the character of the debates in that assembly. The result of each discussion, and even the exact numerical division, being upon most important questions known beforehand, the speakers do not aim so much at conviction, as to give satisfaction to their respective parties, and to make the strongest case for the public. Hence a talent for exaggeration, for sarcasm, for giving a dexterous turn to the events of a debate, is more popular, and perhaps more useful, than the knowledge which can impart light, or the candor which seeks only for justice and truth. It is the main object of each party to vindicate itself—to expose the antagonist party to indignation and contempt. Hence the most successful speaker; that is, he who is heard with the greatest

pleasure, very often is one who abandons the point of debate altogether, and singles out from the adversary some victim whom he may torture by ridicule or reproach; or lay hold of some popular party topic, likely to point the public indignation against his opponents, or to flatter the passions of his adherents. Many of the speeches are not, in effect, addressed to the supposed audience, but to the people; and consequently, like scene-painting, which is to be viewed at a distance; and, like the original, are more remarkable for the boldness of the figures and the vivacity of the coloring, than for nature or truth. It is not the *genus deliberativum*,* but the *genus demonstrativum* of eloquence, that is most successful in the House of Commons."

It is for these reasons that so many who have acquired high reputation in other pursuits, have altogether failed in parliament. Addison, all versed in literature, and so familiar with the oratorical remains of the ancients, is known to have been unable to conclude a speech that he had begun. And we have seen in our own times one of the most accomplished of our diplomatists, a great statesman, who with a powerful intellect possessed a most refined taste, scarcely able to convey, in intelligible language, his opinions or sentiments. Parliamentary failure has been the fate of others besides lawyers.

The reason that more attention has been directed to the failure of great lawyers in this arena, than of other people, arises from the fact, that few lawyers

* "The *genus deliberativum* is for the senate; the *genus demonstrativum* is conversant with praise and blame." Cic. de Invent.

enter the house without being preceded by a high reputation, if not for positive eloquence, at least for a dexterous use of their learning and powers, acquired in other fields, and directed to other objects. High expectation is thus excited, which is scarcely ever realised. No small proportion of clever men in this country have had to bewail "*the curse of a reputation:*" a curse indeed it is, as it often proves their ultimate ruin. It is well known that Canning originally belonged to the whig party, and was to have been brought into parliament under their auspices. When some observation was made on Mr. Jenkinson (afterwards Lord Liverpoel), a very young man, who had just then been introduced by the tories, Sheridan rose and said, "that his friends too, in that house, would be able to boast a youthful supporter, whose talents and eloquence would not be inferior to those of the élève of the ministry." It is said that Sheridan at this time knew that Canning was no longer with his party, and thus chaunted his praises, only to awaken expectations that he trusted might disconcert the youthful aspirant when he should take his seat. Erskine's high reputation at the bar, was the cause of his failure in the house. Lord Thurlow, who succeeded in making a great impression in the house, is always thought to have done so because his reputation as a lawyer had not preceded him. It is not to be denied, however, that the *habits* of forensic oratory do not qualify, or, rather, do, in some degree, disqualify, an individual for success in parliament. Wit and humor, so foreign to the severe reasonings and close deductions to which the lawyer habituates himself, are the prime elements of success in the House of Commons. When somebody

asked Sheridan, how it was he succeeded so well in the house, he replied, "Why, sir, I had not been there very long, before I found three-fourths of the members were fools, and the whole loved a joke. I resolved, therefore, not to shock them by too much severity of argument, and to amuse them by a sufficient quantity of humor. This is the whole secret of my success."

Charles Townsend, who is described by Burke as one of the most effective speakers of his day, was renowned for his wit; a quality in which Lord North and Charles Fox were equally pre-eminent. When Boswell told Dr. Johnson that he had been retained to oppose a road bill, at the bar of the House of Commons, and asked him, in what way he could make the best impression on that assembly, Johnson replied, "Why, sir, you must provide yourself with a good deal of extraneous matter, which you are to produce occasionally, so as to fill up the time; for you must consider that they do not listen much. If you begin with the strength of your cause, it may be lost before they begin to listen: when you catch a moment, press the merits of the question upon them." Mr. Wilkes' advice was something similar; "Be as impudent as you can, and as merry as you can, and say whatever comes uppermost." "You must not," said Johnson to Boswell, on another but similar occasion, "argue as if you were arguing in the schools; close reasoning will not fix their attention; you must say the same thing over and over again in different words If you say it but once, they miss it in a moment of inattention."

Now for such a style of oratory as this, the habit of addressing a court of law forms, most certainly, no

preparation. If in parliament, a custom of reasoning closely is not an element of success, a legal education is no good preliminary to parliament. To this habit allusion is made, when it is said of certain members of parliament that they forget they are not in Westminster hall. Even Lord Hardwicke, who was an able and effective speaker, always betrayed his profession whenever addressing the House of Lords. "He never could," says Lord Chesterfield, "divest himself of the pleader." Lord Erskine, in commenting on Burke's oratory, censures that great man for a fault, the precise converse of that which characterises the parliamentary eloquence of the lawyer. "A public speaker," he says, "should not be episodical; it is a very great mistake. I hold it a rule respecting public speaking, which ought never to be violated, that the speaker should not introduce into his oratory insular brilliant passages; they always tend to call off the minds of his hearers, and to make them wander from what ought to be the main business of his speech. If he wishes to introduce brilliant passages, they should run along the line of his subject-matter, and never quit it. Burke's episodes," he adds, "are highly beautiful; I know nothing more beautiful; but they were his defects in speaking."* Although, in a critical point of view these are faults which Lord Erskine thus censures, yet they are faults which it is

* Lord Erskine, however, was a great admirer of Burke's writings. "When I look," he said, "into my own mind, and find its best light and principles fed from that immense magazine of moral and political wisdom, which he has left as an inheritance to mankind for their instruction, I feel myself repelled, by an awful and grateful sensibility, from petulantly approaching him."

necessary to incur to a certain extent in addressing a public body. To present to a great number, especially of the House of Commons, a strictly logical statement, would be useless for the purposes of persuasion. Undoubtedly, however, mere brilliant displays are to be avoided, those figures and metaphors which, as Lord Brougham observes, may be likened rather to fireworks shown up for display, than sparks emitted from a working engine.

The absurd adherence to mere formalities, which has been often objected against lawyers, is, perhaps, the charge to which they are the most justly obnoxious. It was probably on this account that Swift observed that they, "of all others, seem least to understand the nature of government in general;" and induced the author of the "Pursuits of Literature," to declare that

"In state affairs, all barristers are vain."

In a debate in the House of Commons in 1764, on the subject of Wilkes' arrest by a general warrant, Sir Charles Sewell, Master of the Rolls, who usually sat in the house in his bag wig, when a motion was made for an adjournment of the question for three days, said, "that such an adjournment would enable him to look into the authorities, and give a decided opinion on the subject, which he was, at present, unable to do." The adjournment was carried, and when the debate was resumed after it, he said, "that he had, that morning turned the whole matter over in his mind as he lay, upon his pillow, and, after ruminating and considering a great deal, he could not help declaring that he was of the same opinion that he was

before." Upon this Charles Townsend started up and exclaimed, "that he was very sorry to observe that what the right honorable gentleman had found in his night-cap he had lost in his periwig!".

The practice of the law is not altogether—certainly, unless corrected by other studies—favorable to the promotion of those comprehensive and liberal views, which should characterise the statesmen. "Whilst it sharpens the edge it narrows the blade," as Coleridge has well observed. Lawyers are apt to regard too much the *formal*, and too little the real nature of things, and to mistake words for things. Sir James Marriott, an admiralty judge, in addressing the House of Commons on the question of American taxation, declared "that it appeared to him that the matter had been mistaken throughout the whole argument. It had been contended that America should not be taxed, because she was not represented. But the assertion is untrue, seeing that, when we took possession of America, we did so *as part and parcel of the manor of East Greenwich, in the county of Kent.*"

We find in the speeches of our early lawyers, the same fondness for scriptural illustration which distinguishes their writings. These illustrations are not always introduced in the best taste, but, possibly, in early times, they produced some effect.

In opposing a bill for making the utterance of treasonable words punishable as treason, Serjeant Maynard, after insisting generally upon the policy of adhering to the principles of the 25 Edward III, by which an overt act was made the proof of ill intentions, went on to meet the objection which it seems had great weight in those days, that, out of the abundance of the heart, the mouth spake. He remarked. in a reply,

how easily words could be misunderstood. How easily might our Saviour's words "Destroy *this* temple," have been mistaken for Destroy *the* temple;" and the learned serjeant, to prove the matter, pronounced the words in Syriack "Nothing," he continued, "was more innocent than these words, as our Saviour meant and spoke them; but nothing was more criminal than the setting of a multitude to destroy the temple." This argument is said to have made some impression on the house.

Sir Dudley Ryder, when Attorney-general, in alluding to a bill for preventing clandestine marriages, which had been supported by the bishops, and which dissolved certain marriages for temporal reasons, eulogised, in the highest terms, the right reverend bench, "who had," as he expressed it, "at last reduced Christianity to a system." This called down upon the speaker's head several severe comments, which compelled him to explain.

In respect to the favorite practice of illustrating parliamentary questions by a reference to Scripture, the extraordinary speech of Sir John Scott, afterwards Lord Eldon, against Fox's East India Bill, will occur to the mind. In this, he drew a parallel between the bill and the beast in the Revelations, "And I stood upon the sand of the sea, and saw a beast rise up out of the sea, having seven heads and ten horns, and upon his horns ten crowns." The beast, according to Mr. Scott, with the seven horns, clearly pointed to Mr. Fox with his seven commissioners. "And they worshipped the dragon which gave power unto the beast, saying, Who is like unto the beast? Who is able to make war with him? And there was given unto him a mouth speak-

ing great things, and power was given unto him to continue forty and two months." "There," said Mr. Scott, "I believe there is a mistake of two months." "And he caused all, both small and great, rich and poor, to receive a mark in their right hands, or in their foreheads." "Here places, peerages, and pensions, are clearly marked out." "And he cried mightily with a strong voice, saying, Babylon the great" (plainly the East India Company) "is fallen, and is become the habitation of devils, the hold of every foul spirit, and the cage of every unclean bird." After this he quoted a passage from Thucydides, and then repeated the passage in Othello.

"Kill me not to-night, my lord,
Let me live but one day, one hour."

Sheridan, however, retorted on Scott with much effect, quoting other passages from the same book, which, according to the reporter, "told strongly for the bill," and which proved that Lord Fitzwilliam and his fellow-commissioners, instead of being the seven heads of the beast, were seven angels "clothed in pure and white linen."*

On the same occasion Mr. Arden (the Lord Alvanley of after days) indulged in raillery less profane, but hardly more effective. He declared "that he regarded Lord North as a king, and the right honorable gentleman (Mr. Fox) as an emperor, the emperor of the East. The seven commissioners also might be

* Scott, however, addressed the house with so much vigor on the Regency bill, that both North and Fox regretted that they could not speak immediately after him to obliterate the impression which his speech made on the house.

considered as seven emperors, seven holy Roman emperors, tributary and subordinate to the emperor of the East." When the bill had been read a third time, the secretary for the Treasury moved the insertion of the usual clause (accidentally omitted) that the act should be considered as a public act. Arden immediately got up and protested that he did not wonder this clause had been forgotten, for he had always looked on the measure as a *private job.* It has been recorded that "Hot Arden once blundered on a joke," which line in the Rolliad is thus explained in a note: "The miracle of a jest from Mr. Arden happened on the occasion of some resolutions having passed between the hours of six and seven in the morning, for which reason the attorney-general facetiously contended that they were entitled to no respect, 'as the house was then at sixes and sevens.'" Sheridan might have addressed the lively solicitor-general in the language which he once applied to a certain noble lord, more remarkable for gravity than sense, "Pray, my lord, take care; a joke in your mouth would be no joke indeed!"

Erskine's career in Parliament greatly disappointed his friends and the world, who expected great things from the brilliant advocate. The first time "when he rose to speak in the House of Commons," says Mr. Espinasse, "he was received with marked attention, and expectation was high in every part of the house. It was a total failure. Mr. Pitt had prepared himself to take notes of his speech, and had leaned forward, as if to catch every word which fell from him. After listening to him for a few sentences, he flung the paper, on which he had prepared to take notes, on the ground with a look of lofty supercilious contempt so

peculiarly his own. Erskine was of the party opposed to him, and it was said to be a *ruse de guerre* to lower the estimation in which his talents were held. Lord Brougham's observations on Erskine's parliamentary career, are too important to be omitted. "It must be admitted," says he, "that had he appeared in any other period than the age of the Foxes, the Pitts, and the Burkes, there is little chance that he would have been eclipsed even as a debater; but he never appears to have given his whole mind to the practice of debating, and to have possessed but a very scanty provision of political information. Earlier practice, and more devotion to the pursuit, would, doubtless, have vanquished all these disadvantages; but they sufficed to keep Mr. Erskine in a station far beneath his talents, as long as he remained in the House of Commons."

Lord Mansfield furnishes unquestionably the strongest evidence against the alleged incompatibility of forensic acquirements with that species of eloquence necessary to success in the House of Commons. He was not only one of the most eloquent speakers—he was also the ablest debater of his day; and if not the ostensible, at least the actual leader of the ministerial party. He was the only leading member upon whom the Duke of Newcastle, then at the head of the ministry, could rely. So much importance did the opposition attach to silencing Murray, that the celebrated Pitt, (afterwards Earl of Chatham,) himself undertook the task; but we are told by Lord Waldegrave, who will not be suspected of any prepossession towards Murray, that he had greatly the advantage over Pitt in argument, and in every other part of oratory, except abuse. Horace Walpole, in

detailing the debates in which their statesmen came into collision, says, "Pitt could only attack—Murray only defend." Speaking of the three great speakers of the day, Murray, Pitt, and Fox, Walpole says, "Murray, the brightest of the three, had too much and too little of the orator; he refined too much, and could wrangle too little for a popular assembly." In the character of Lord Chatham, attributed to Mr. Grattan, the distinctive peculiarities of the two great rivals is set in a clearer light, "Chatham did not, like Murray, conduct the understanding through the painful subtleties of argument, but rather *lightened* upon his subject, and reached the point by the flashings of his mind, which, like his eye, could be felt, but not followed."

This expresses, with tolerable accuracy, the peculiar defect that attaches to lawyers when addressing a body like the House of Commons. All Murray's superiority of argument availed him little in his contests with Pitt. In detailing a debate in the House of Commons at this time, Lord Waldegrave says, "Pitt rose again—he made his inferences as before, and in both speeches every word was Murray. * * * I sat next to Murray, who suffered for an hour." Upon one occasion, while Pitt was speaking, Murray, who knew his turn would soon come, sat in a state of suffering for some time. At length, Pitt paused, and fixing his eyes on his victim, said, "I must now address a few words to Mr. Solicitor—they shall be few—but they shall be daggers." Murray was agitated—the look was continued—the agitation increased—"Judge Festus trembles!" exclaimed Pitt. "He shall hear me some other day." He sat down

—Murray made no reply, and a languid debate is said to have shown the paralysis of the house.*

So great did Murray show himself in parliament, that the ministry displayed no inclination to part with him. When the chief justiceship became vacant by the death of Sir Dudley Ryder, Murray naturally expected to have been appointed to it. Offer after offer was made to induce him to continue in the House of Commons. He was offered the chancellorship of the Duchy of Lancaster for life, with a pension of £2000 a-year; permission to remain attorney-general, (worth, with the private practice it brought, £7000 a-year,) and the reversion of the first tellership of the Exchequer for his nephew, Viscount Stormont. He refused this offer—reminding the ministers of his repeated declarations, that he would receive no appointment not connected with his profession. Hoping to subdue his obstinacy by raising their biddings, they offered him a pension of six thousand (instead of two thousand) a-year—they implored him to stay but one month, nay, only one day, to meet their enemies in the House of Commons. "Good God," he exclaimed, "what merit have I that you should load this country, for which so little is done with spirit, with an additional burden of six thousand a-

* The animosity which Pitt exhibited towards Murray, survived the altered circumstances that saw them both in the House of Lords. In a debate upon the subject of Mr. Wilkes and the Middlesex election, Lord Chatham quoted the opinions of Lord Somers and Chief Justice Holt, in support of the position he was endeavouring to establish—he then sketched their characters, declaring that they possessed "not only abilities—but honesty;" then turning towards Lord Mansfield, he exclaimed, "I vow to God, that the noble lord equals them—in abilities!"

year?" Finding, however, they still were not disposed to comply with his wishes, he intimated his intention of resigning the attorney-generalship, and leaving them to fight their battles as they could. This was sufficient, and he was immediately appointed. When Charles Townsend heard of Murray's intended elevation, he said to him, "I wish you joy; or rather I wish myself joy, for you will ruin the duke of Newcastle by quitting the House of Commons, and the chancellor, by going into the House of Lords." And so it proved; eleven days after Murray was raised to the bench the ministry resigned.

In the House of Lords, Lord Mansfield appeared to great advantage. His classic and elegant oratory appeared to a far greater advantage in that aristocratic and deliberative assembly, than it had done in the tumult and conflicts of the lower house. Not only did he there display the qualities of a great orator, but the wisdom of an enlightened statesman. The following anecdote would lead us to believe that his powers of political foresight were most remarkable.

"During the autumn of 1788," says Wraxall,* "when Hastings' trial had already proceeded during a whole session in Westminster hall, Sir John Macpherson drove out, before dinner, to Caen Wood, in

* It has been the fashion to impugn the accuracy of Sir Nathaniel Wraxall's memoirs; we believe them to be, in general, accurate. Some wag has written the following epigram on the garrulous, but entertaining, old baronet:

"Men, measures, seasons, scenes, facts all,
Misquoting, misstating,
Misplacing, misdating,
Here lies Sir Nathaniel Wraxall."

order to pay his respects, to the great Earl of Mansfield. That nobleman was then more than eighty-three-years of age, infirm in body, and sinking in health, but still retained all the freshness as well as the vigor of his intellect. 'I found him,' said Sir John, 'sitting before the door in front of his house, and by no means free from bodily pain. He received me with the utmost politeness, conducted me into his library, where he walked up and down, conversed with me on the leading events of the day, and at last, asked, what was my opinion of Pitt. I replied, that I considered him as a great minister.' 'A great minister! exclaimed Lord Mansfield; 'a great young minister you mean, Sir John; what did he intend by impeaching Mr. Hastings, or suffering him to be impeached?' 'He meant,' said I, 'as I apprehend, to let justice take her course.' 'Justice, sir,' rejoined Lord Mansfield, 'pray where is she?' 'If you, my lord,' returned I, 'don't know where to find justice, who have been dispensing her favors these fifty years, how can any man attempt it?' 'Yes, sir,' answered he, 'that is justice between man and man. All which is thus done, is well done. It is terminated. *Criminal* justice I can comprehend. But *political* justice, where is she? what is she? what is her color? Sometimes she is black, sometimes she is red too. No! Sir John, Mr. Pitt is *not* a great minister. He is a great young minister. He will live to repent allowing Mr. Hastings to be impeached. He has made a precedent which will some future day be used against himself. Mr. Pitt is only a great young minister.' " The impeachment of Dundas, Pitt's intimate friend and trusty coadjutor, soon proved that the old earl had prophesied aright.

Law, afterwards Lord Ellenborough, was another instance that parliamentary and forensic abilities are by no means incompatible. And he was a remarkable instance, as he never had the advantage of any parliamentary training: he entered parliament as attorney-general, and was therefore compelled at once to take a prominent part in debate. He was also in his fifty-first year—an age when men are usually considered past learning, and yet, with all these disadvantages, the energy of his character won for him the reputation of an able and useful member. When he attended the levee after his appointment, the king said to him, "Mr. Law, have you ever been in parliament?" He replied that he had not. "I am glad to hear it: my attorney-general ought not to have been in parliament, for then, you know, he will not be obliged to eat his own words." Vigor, which sometimes degenerated into coarseness, was the characteristic of his oratory. In a debate on the regency question, he observed, that in the reign of Henry VI, the revenues of the duchy of Lancaster were under the control of the king, when some one remarked, that the law was shortly afterwards changed. "Aye," said the attorney-general, "in times of trouble. Honorable gentlemen opposite, seem well versed in the troubles of their country." There was a loud cry of "order," from the opposition.

In the House of Lords, he displayed a spirit as fierce and intemperate. In the discussion in the Lords respecting the compensation given by Pitt to the Duke of Athol, for the sovereignty of the Isle of Man, Lord Ellenborough used language unworthy the noble assembly he was addressing. Lord Mulgrave reproved him in a highly dignified tone, reminding him, "that

he was addressing peers, not lawyers; the House of Lords, and not the mob in Palace Yard." His grave and quaint humor often, however, excited in the house feelings of another kind. Lord Darnley was once making a dull and drowsy speech on Ireland and her wrongs, which lulled the house to "soft repose." At length, the noble orator, beginning himself to share in the languor of the house, stopped short in his address to indulge himself in a yawn. "There's some sense in that," caustically observed Lord Ellenborough, amidst the laughter of noble lords.*

Lord Thurlow was an able speaker in the House of Commons, and made considerable impression on that assembly very shortly after he took his seat.— "His majestic sense" has been commemorated by Gibbon; but such a phrase conveys but a faint conception of the forcible declamation and irresistible eloquence of this great man. For a lawyer, he had less of the lawyer apparent in his speaking, than is often found; rather powerful than subtle, less persuasive than convincing, more vehement than argumentative, he was especially fitted to shine in that arena of angry contention, where, to interest the feeling and awaken the sympathies, is rather the task, than to direct the judgment and secure the reason; where men strive rather to strengthen and gratify their own party, than to convert their opponents. However, on one occasion, when Thurlow opposed a bill introduced by Alderman Beckford, which imposed on every

* When attorney-general, he was listening with impatience to the prosy judgment of a loquacious judge, who said, "In —— v. —— I ruled so and so." "You ruled!" growled the attorney-general, "you ruled! you were never fit to rule anything but a copy-book."

member of the House of Commons, before he took his seat, an oath, that neither directly nor indirectly he had been guilty of bribery, he appears to have treated the matter in more of a legal spirit than was usual with him. "The honorable member," said Beckford, in replying to him, "in his learned discourse, first gave us one definition of corruption, then he gave us another, and I think was about to give us a third. Pray does the honorable gentleman suppose, that there is a single member of this house that does not know what corruption is?"

Wedderburne, afterwards Lord Loughborough, was another instance of a lawyer's succeeding in the House of Commons. He began in the opposition, and one of the first individuals with whom he came into collision, was the attorney-general, De Grey, to whose seat on the bench of the Common Pleas he afterwards succeeded. "Mr. Attorney" had concluded a speech, in which he had advocated the maintenance of things *as they are*, with quoting the lines—

> "Better to bear the ills we have,
> Than fly to others that we know not of."

Wedderburne, in commencing his reply, continued the quotation, which told directly against his opponent:

> "And thus the native hue of resolution
> Is sicklied o'er with the pale cast of thought;
> And enterprises of great pith and moment
> With this regard their currents turn awry,
> And lose the name of action."

Upon another occasion, in speaking of the benefits

and disadvantages of a free press, he said, "If it poisons the minds of the people, it likewise administers an antidote. The same wagons, the same flys and stages, that carry down into the country the lies and abuse of faction, carry down also the lies and abuse of the ministry. If any one is bit by the tarantula of opposition, he is cured by the music of the court." These anecdotes prove that he acquired that art which is more serviceable in parliament than mere orations, and certainly than mere learning—the art of debating. When solicitor and attorney-general, he contributed very effectually to preserve the North administration in power.

It is strange to observe how much the zeal of partisanship may reduce even the wariness of the lawyer.

Lee, (who was attorney-general in Fox's administration,) a coarse, violent, but able man, in addressing the house in support of the East India Bill, determined to prove that, although a lawyer, his mind was shackled with no vulgar prejudices: for, indulging, as was his habit in a strain of rough blustering invective, he declared that he felt the utmost scorn of those arguments that had been based on the inviolability of the company's charter; "for what is this same charter," he added, "but a skin of parchment, to which is added a seal of wax?" This imprudent speech made a most unfavorable impression on the house, and involved the supporters of the measure in much unpopularity. Insolent assertion, however, was Lee's favorite style of oratory. When he used to appear as a counsel at the house, Wilkes said of him, "Jack Lee is the best heard there of any counsel, and he is the most impudent dog."

Sir Samuel Romilly, a name dear to the philanthropist, was remarkable for his capabilities as a speaker. One passage of his speech on the abolition of the slave trade, was so greatly admired, as to have elicited three distinct cheers from both sides of the house. Did our space permit, we should have been glad to have inserted a copious account of this excellent man, whose legal attainments entitle him to a conspicuous place, and lengthened mention. He had much of the old Roman about him. Much of that haughty integrity—may we say, repulsive sternness?—associated in our minds with the idea of such a character. He was, however, really and truly amiable: one of his most striking peculiarities is thus mentioned by Mr. Wilberforce, who was warmly attached to him.

"One of the most remarkable things about Romilly was, though he had such an immense quantity of business, he seemed always an idle man. If you had not known who or what he was, you would have said, 'he is a remarkably gentleman-like, pleasant man; I suppose, poor fellow, he has no business;' for he would stand at the bar of the house and chat with you, and talk over the last novel, with which he was as well acquainted as if he had nothing else to think about. Once, indeed, I remember coming to speak to him in court, and seeing him look fagged, and with an immense pile of papers by him. This was at a time when Lord Eldon had been reproached for having left business undischarged, and had declared that he would get through all arrears by sitting until the business was done. As I went up to Romilly, Lord Eldon saw me, and beckoned to me with as much cheerfulness and gaiety as possible. When I was

alone with Romilly, and asked him how he was, he answered, 'I am worn to death; here we have been sitting on in the vacation, from nine in the morning until four, and when we leave this place, I have to read through all my papers to be ready for to-morrow morning; but the most extraordinary part of all, is, that Eldon, who has not only mine, but all the other business to go through, is just as cheerful and untired as ever."

We should scarcely be justified in here omitting the name of one who followed in the enlightened course of Romilly, and completed many of those reforms which that intrepid philanthropist was spared only to originate—we need not observe that we allude to Sir James Mackintosh. This excellent man, although his name can never be mentioned without respect, will never be considered either as a profound lawyer or as a great statesman. The most striking peculiarity of his mind, while it admirably fitted him for an historian, utterly disqualified him for the pursuits of the advocate, whether in parliament or at the bar. He possessed, beyond all men living, the faculty of appreciating the value of the arguments which may be urged on either side of any contested point; and was unable even for a time to suspend the exercise of his judgment, and state forcibly and exclusively those arguments alone, to which he gave the preference. On the contrary, speaking in the house or elsewhere, he was not content with stating his own case; he would state, also, that of his adversary, and that with so much precision, that he often discomfited his friends, and advantaged his enemies. His style of speaking was always the same, whether his subject was forsenic or political. He was

fond of resting his case on general principles of morality—he would rather lecture than plead—he sought rather to reason than to convince. He was admirably adapted for the post he was anxious to obtain in his earlier years—the chair of moral philosophy at some university.

The following example of his style as an advocate, is communicated in a letter from Mr. Basil Montagu to Sir James' son. "Your father was retained with me, as junior counsel, on behalf of a gentleman, against whom an action had been commenced by a clergyman, for having said that he had misled and seduced the affections of a young lady, who, as pupil, was entrusted to his care. The defence was, '*that the charge was true.*' The court was crowded to excess. The cause was last on the paper, and came on late, after dark in the evening. Lord Alvanley was the judge. The plaintiff's case was easily proved. About ten at night, your father rose, agitated, as I well knew, in mind, but in manner most tranquil. The outline of his address, I well remember. You must consider it a mere skeleton. He began by an explanation of the nature of power, the means to obtain an end, and of knowledge, the most irresistible of all powers. He described its use in preserving ourselves, and in promoting the happiness of society, which he illustrated by the instances of many of the noble patriots, by whom England has ever been distinguished. He then described the abuse of the power of knowledge for the gratification of passion, misleading ignorance and innocence, which he illustrated by various characters—the swindler, the libeller and seducer. 'The abuse of power,' he added, 'we have this night to consider, is the abuse of it, by the preceptor over his pupil; by

a christian clergyman over a young woman, whose parents had confided her to his care and instruction? The court was as still as the grave. The plaintiff stood nearly opposite to us. Your father, mistaking the silence of the court for want of interest and thinking (as he afterwards informed me) that he had wandered too much into philosophy, hesitated. I saw his embarrassment. I was deeply affected. The sight of my tears convinced him of his error. I earnestly said 'for God's sake go on.' In a strain of eloquence never exceeded, he proceeded. The whole court was carried away; I never saw such emotion; the opposite counsel and the judge were manifestly agitated. At this moment, I was told that the father of the young woman was with his daughter sitting near to Lord Alvanley. I hinted it to my friend. He turned instantly from the jury to the bench. He called upon the father, by all the sweet love of a parent for his child, to protect her from the tutor, in whom he had misplaced his confidence. He appealed to his daughter—as a father, he appealed to her. He besought her not to err, by the only mode by which she could be misled, her piety, her love of knowledge, and of virtue. He turned instantly to the plaintiff—old enough to be the father of the young woman—who stood unmoved before us. I will not attempt to describe his appeal. * * It is my belief that such an effect was never produced in any court of justice. The judge reluctantly endeavored to counteract the impression which had been produced, by putting his weight into the opposite scale, but it was vain;—a verdict was pronounced for the defendant."

The most celebrated case, however, in which he was engaged, was the defence of Peltier, for a libel on

Buonaparte, with whom we were then at peace. This defence deserves perusal, as a magnificent oration, replete with wit, fancy and learning, with superb episodes, the character of which partakes alike of oratorical sublimity, and historical simplicity, and manifest powers of no ordinary description: as a defence, as a specimen of advocacy, it is a miserable failure. Peltier declared "Dat de feller" had sacrificed him, to shower his praises on Napoleon. Mr. Windham declared, that if Mackintosh had spoken for Peltier in the same manner as he once spoke before an election committee, his client would have had a better chance of escape.

In our time the debates of the House of Commons often discover lawyers out of their element, while we have some who display themselves to great advantage.

Sir Edward Sugden does not appear to advantage in parliament; which is a fact not easy to be accounted for. He has a cool sarcastic tone, which properly managed, would be telling; he has also a decided turn for epigrammatic speaking. He is, however, too fond of declamation and fine words. Amongst our modern parliamentary speakers belonging to the legal profession, one of the most promising was "that clever young man," Mr. Horace Twiss. His maiden speech, however, was attended with some very unfortunate circumstances. After he had spoken for about ten minutes, he said, "I have now said enough;" "on this branch of the subject,"·doubtlessly he would have added, but he was cut short by Mr. Brougham, with a loud "hear! hear!" which was re-echoed by the house. It is a difficult matter, it must be confessed, to resist the allurements of a

good joke, but the consequences of this witticism might, and with a man of keen sensibilities, certainly would have lost the house a useful and efficient member. Mr. Twiss, however, was not daunted, and very soon obliterated the recollection of his first mishap. He is not now in the house, nor has been for some parliaments: we think his absence is much to be regretted.

Mr. Pemberton, it is known, delivered one of the ablest, if not the ablest speech against the Reform Bill. Sir William Follett is, also, confessedly one of the most powerful and efficient speakers of the day; and the attorney-general has, on several occasions, addressed the house with considerable effect. Lord Abinger has spoken but rarely since his elevation to the peerage, observing that discreet silence on political matters which befits the dignity of the judicial character; but, during the period he was a member of the House of Commons, he was not conspicuous for his oratorical powers. His habits of refining and subtilizing, the very softness or (*si sic loquar*) oiliness of his manner, which availed him so much at *nisi prius*, operated to his disadvantage as a parliamentary speaker. Lord Denman, whose voice at present, and for a similar reason to that of the Chief Baron, is rarely heard in parliament, was, when in the lower house, not simply an eloquent speaker, but a ready and effective debater. During the time the Reform Bill was going through committee, he came frequently into collision with Sir Charles Wetherell, and the conflict was extremely amusing. The worthy night, with all his quaint diction and ingenious turns, was no match for the sturdy "up-right and down-straight" style of the whig attorney-

general: He, however, managed to avoid the appearance of defeat, and was always ready, however worsted, to resume the combat whenever occasion should arise. During one of these tourneys, Sir Charles, in a long, rambling, but amusing speech, compared Old Sarum to Macedon. The retort was quick, "Yes," replied Denman, "Macedon was ruled by an Alexander." Mr. Alexander, the East India Director, as is well known, for some time represented this borough in parliament. Mr. Serjeant Wilde in the House seldom forgets Westminster hall. In the House of Lords, Lords Brougham and Lyndhurst fully sustain the credit of their profession; but as the public has long ago made up its mind on their merits, we need say no more. Some of the ablest speakers in the House of Lords, at all periods, have filled judicial situations:—Lord Camden and Lord Mansfield, are names which will immediately occur to our readers. Lord Kenyon, so rough in the House of Commons, so overbearing on the bench, never lost himself in addressing the House of Lords: he never appeared at a greater advantage than in performing this duty.

Very different was the conduct of his predecessor, Jeffreys, who, according to Burnet, carried away by the heat of party, addressed the House of Lords on one occasion with those scurrilous invectives and gestures of menace, with which he was acustomed to overawe juries. But his insolence "roused the indignation instead of commanding the acquiescence of the Lords." He then sunk from arrogance to meanness, and strove to conciliate by adulation those he could not command by insolence. Jeffreys had, however, the reputation of being an able and forcible speaker and quite capable, if his brutal nature had

permitted him, of making an impression on the august assembly which he so grossly and so uselessly insulted.

Lord Somers appeared to great advantage in the House of Lords—an arena in which lawyers display themselves more at their ease than in the sharp party contests with which the House of Commons is usually engaged. Of lawyers in the House of Commons, Burke, who, with his powerful mind, was by no means free from prejudice, and who was especially prejudiced against lawyers, says that they were only sojourners: they were birds of a different feather, and only perched in that house in their flight to another; only resting their pinions there for awhile, yet ever fluttering to be gone to the regions of coronets: like the Hibernian in the ship, they cared not how soon they foundered, because they were only passengers; their best bower anchor was always cast in the House of Lords.

Mr. Windham, than whom a more competent authority on such a subject could hardly have been selected, once said to Mr. afterwards Sir Vicary Gibbs; "never think of a seat in parliament till you have pretensions to the rank of solicitor-general." Still to enter parliament late in life, when a man has "got stiff in the joints," is a course equally to be avoided. We have had many instances of the failures of men who have commenced their parliamentary career late in life. Mr. Cobbett and Mr. Jeffrey are two instances which will immediately occur to the mind of the reader. Scarcely could two individuals have been selected, although they had few qualities in common, more qualified by nature to succeed in the House of commons; yet, from their entering too late to acquire that species of knowledge necessary to the

accomplished senator, they both failed in making any impression. Grattan said of Flood, who was brought into parliament under similar circumstances, that "the oak of the forest was too old to be transplanted at sixty."

In ancient times lawyers were frequently, and by repeated acts of parliament and ordinances, disqualified from sitting as members of the House of Commons. In the writ of summons, a prohibition against their election was often inserted. Lawyers indeed were according to Carte, the first class positively excluded from the house, and it is supposed that the words "*gladiis cinctos*" (girded with swords,) which appear in the writs of summons in the time of Edward III, were introduced to exclude them. At that time lawyers abounded in the house. "Four shillings a day," writes Carte, "the constant wages of a knight of the shire,* though more than ten times

* The allowance of a burgess was only half that sum. Members, sometimes, however made private bargains with their constituents. The following is a copy of an agreement, in which John Strange, the member for Dunwich, in 1463, contracted with the burgesses of that town, to act as their representative in consideration of a certain quantity of red herrings. "This bill indented, made the fifteenth day of April, in the third year of King Edward the Fourth, between Thomas Peers and John Scherling, bailiffs of the town of Dunwich, and John Strange of Brainsun, Esquire, witnesseth that the said John Strange granteth by these presents, to be one of the burgesses for Dunwich, at the parliament to been holdyn at Westminster, the xxix day of this said month of April, for which, whether it hold longer time or short, or whether it fortune to be prorogued,. the said John Strange granted no more to be taken for his wages than a cade full of herrings and half a barrel full of herrings, to be delivered on Christmas next coming.

"In witness whereof, &c."

that number in our days, was not a sufficient equivalent for the trouble and inconvenience which a gentleman of the first distinction in his county, must undergo by removing to London; nor indeed was it worth his attention; but it was a very considerable advantage to a lawyer, whose business called him thither in term time; the terms being in those days the usual times of parliament sitting." However, to exclude the lawyers still more effectually, it was declared that if elected they should not receive the wages paid to the members in those days. We read in a writ of summons, dated Lichfield, in the fifth year of Henry IV, "the king willed that neither you nor any other sheriff (vice-comes) of the kingdom, or any apprentice, nor other man following the law should be chosen." "This prohibition," says Coke, (4th Inst. 48,) "was inserted in virtue of an ordinance of the Lords, made in the forty-sixth year of Edward III; and by reason of its insertion, this parliament was fruitless, and never a good law made thereat, and therefore called Indoctum parliamentum, or lack-learning parliament. Since this time," he adds, "lawyers (for the great and good service of the commonwealth,) have been eligible." Pryme, that "voluminous zealot," however, argues for the propriety of their exclusion, which he declares shortened the duration of the session, facilitated the despatch of business, and had the desirable effect "of restoring laws to their primitive Saxon simplicity, and making them most like God's commandments."

## CHAPTER II.

### LAW LITERATURE.

**Law and the Scriptures—The Law of Gravitation, and the Law of Descent—Members of Parliament and Elephants—The Deluge, and the Theory of Fines—Conjugal Affection of the Swan—Mr. Hargrave's Love of Fine Writing—Lord Stowel—Sir R. Dallas' Metaphors—Mr. Fearne—Docking an Entail explained—Scotch Law Phrases—Sir Thomas More and the Doctor at Bruges—Lord-Keeper Williams—Law Phrases Law Language—Specimens of Law-French—Law Books; their increase—A Law Library in the time of Coke—The Year Books and Reports—How to write a Law Book—Statute Law—Title of an Act of Parliament—Omnipotency of the Legislature—Blackstone's Commentaries.**

THE *literary* influence of the Bible has scarcely been properly appreciated. It was, indeed, most extensive. When, after having been for ages a sealed book to the millions, it was with all its wonderful stores, circulated in a known tongue through the land, an opinion appears to have gone abroad, that it contained not simply the rule of life and the conditions of salvation, but also a treasury of knowledge, whence might be gathered principles to solve all difficulties, explain all mysteries, account for all phenomena, and of which at any time the human mind had become, or could become, cognizant.

Considering it in this light, acute minds found meanings in its pages wholly foreign to the intentions of the writers. Systems of government and codes of

laws, were derived from the narration of patriarchal times, or the records of the Jewish polity; and the astronomer and alchymist, in a like manner, animated with similar hopes,

"Misled by fancy's meteor ray,"

"sought," to use the language of Lord Bacon, "for natural philosophy in the book of Genesis." In the early age of law literature, we find lawyers drawing their illustrations from the same source, and endeavoring to establish the policy of the laws they were expounding, by showing how accordant they were with such as were mentioned in holy writ. In Calvin's case (7 Rep. 2,) in which it was decided that a man born in Scotland, after James I ascended the English throne, was not an alien, much stress was laid on the authority of St. Paul, who, although a native of Cilicia, when about to be scourged, claimed the immunities of a Roman citizen. "So as hereby it is manifest, that Paul was a Jew, born in Tarsus in Cilicia, in Asia Minor, and yet being born under the dominion of the Roman emperor, he was by birth a citizen of Rome, in Italy, in Europe, that is, capable of, and inheritable to, all the privileges and immunities of that city. But such a plea as is now *in arguendo* against Calvin, might have made St. Paul an alien to Rome." The next precedent quoted is that of the people of Samaria. This city, is said to have "of right belonged to Jewry," but being usurped by the king of Syria, and inhabited by "paynims," the people were not under actual obedience, and were therefore "by the judgment of the chief justice of the whole world, adjudged aliens."* In Chudleigh's case (1

* Luke vii.

Rep.) one of the judges drew a parallel between Nebuchadnezzar's tree and the statute of Uses. Sir Edward Coke, in detailing the barbarous punishment formerly inflicted on such as were convicted of high treason, finds authority for each cruelty in the pages of the Bible. The "drawing" is justified by 1 Kings, chap. ii, ver. 28. The "hanging" by Esther, chap. ii, ver. 23. The "embowelling" is sanctioned, in his opinion, by the circumstance of Judas' fate, Acts chap. i, ver. 18. For the extraction of the criminal's heart, he finds authority in 2 Sam. chap xviii, ver. 14, 15. The "beheading," he holds justified by 2 Sam. ch. xx, ver. 22. And he cites 2 Sam. ch. iv, ver. 11, 12, as authorising the practice of hanging up the traitor's disjointed body after execution. The 109th Psalm, in his opinion, sanctions the law of corruption of blood in such cases (3 Inst. 211).

The quaint learning, the perpetual reference to analogies, the love of placing English with Latin words, which disfigured the literature of our Elizabethan age, equally characterises the writings of the lawyers of that time. What more fanciful illustration than those which follow?

Bracton accounts for the old rule of law, "that inheritance may literally descend, but not ascend," upon the principle of gravitation—the bowl rolls down the hill, but never rolls up. Littleton, too, has explained the doctrine of Hotchpot, by the derivation of the term; observing that the term Hotchpot "is in English a pudding, and in this pudding is not commonly put one thing alone, but one thing with other things together."

Sir Edward Coke, in his fourth Institutes (3), institutes a parallel between a useful member of parlia-

ment—one possessed of all such "properties a parliament man should have"—and the Solomon of the bestial world, to wit, the elephant. "Every member of the house, he says, "being a counsellor, should have three properties of the elephant: first, that he hath no gall; secondly, that he is inflexible, and cannot bow; thirdly, that he is of a most ripe and perfect memory. * * We will add two other properties of the elephant, the one, that though they be *Maximæ virtutis et maximi intellectûs*, of greatest strength and understanding, *tamen gregatim semper incædunt*, yet they are sociable and go in companies. Sociable creatures that goe in flocks or herds, are not hurtful as deer, sheep, &c., but beasts that walk solely or singularly, as beares, foxes, &c., are dangerous and hurtful. The other, that the elephant is *Philanthropos, homini erranti viam ostendit* (a philanthropist, who showed the wanderer his road) and these properties ought every parliament man to have;" How astonished would the bar and the public be in these days, to hear a learned justice of the Queen's Bench, in giving judgment on some important point, pursue the same line of observation, as that we find in the decision of that court, in the once famous case of Stowe *v.* Lord Zouch (Plowd. 353.) Mr. Justice Catline, speaking of a fine, levied in pursuance of the 4 Henry VII, compared it to "Janus, who, he said, was Noah, but the Romans *occasionally* called him Janus, and used to paint him with two faces, one looking backwards, in respect that he had seen the former world, which was lost by the flood, and the other looking forwards, for which reason they called him *Janus bifrons*. And also he carried a key in his hand, his power to renew the new world by his

generation. *So* here the act creates, as it were, a flood, by which all former rights before the fine, shall be drowned by non-claim, for non-claim is the flood, and the fine begets a new generation, which is the new right, for the fine makes a new right, and is the beginning of a new world, which proceeds from the time of the fine downwards."*

In the case of Swans (7 Rep ) it is held that cygnets belong equally to the owner of the male and the owner of the female swan; and this is the reason of the law: "The reason thereof is founded on a reason in nature; for the cock swan is an emblem or representation of an affectionate and true husband to his wife above all other fowls; for the cock swan holdeth himself to one female only, and for this cause, nature has conferred on him a gift beyond all others; that is, to die so joyfully, that he sings sweetly when he dies; upon which the poet saith:—

> "'Dulcia defecta modulatur carmina lingua
> Cantator, cygnus, funeris ipse sui,'" &c.

Many other examples might be given, but these will suffice as specimens of early law literature. We

* The quaintness of idea in these observations is more remarkable even than the quaintness of expression. The exceeding simplicity and unwordliness which is observable in the language of many of our older judges, is quite in keeping with the opinion that they were "legal monks." It was the fashion of those days to leave nothing to be understood. Ellipsis was a figure unknown to the lawyer. The grave manner in which they sometimes enunciated the most self-evident facts, is quite ludicrous. When Sir Thomas Wyat was arraigned for high treason, in Queen Mary's days, the solicitor-general sagely remarked, "This shall be called Wyat's Rebellion, as the rebellion of Wat Tyler is called Wat Tyler's Rebellion."

might add to these, some which would show how far the modern lawyer has improved on his predecessors, in point of elegance of style and purity of taste. The love of fine writing, which was the besetting sin of our older lawyers, appears to have been inherited by their descendants. Ugly women are proverbial for their fondness for rich ornaments and gay dress, and, in something of a like way, lawyers, whose subject requires from them nothing but plain and unvarnished, are fond of florid, language. The author of the "Pursuits of Literature" has attacked Mr. Hargrave for his literary attempts; and certainly, as the reader must admit, not without justice.

> "With Hargrave to the Peers approach with awe,
> And sense and grammar sink in Yorke and law."

The following is the passage to which Mr. Mathias refers:—Of Charles Yorke, Hargrave says, "He was a modern *constellation* of English jurisprudence, whose *digressions* from the exuberance of the best judicial knowledge were illustrations, whose energies were oracles, whose constancy of mind was won into the pinnacle of our English forum, at an inauspicious moment; whose exquisiteness of sensibility at almost the next moment, from the impression of imputed error, stormed the fort of even his highly-cultivated reason, and so made elevation and extinction contemporaneous; and whose prematureness of fate has caused an almost insuppliable interstice in the science of English equity."

The splendid confusion of metaphors in this rhapsody, reminds us of the fate of Tarpeia, who sunk beneath her ornaments. The besetting sin of lawyers has sometimes displayed itself in those whose classical

training should have produced better things. Lord Stowel, whose literary accomplishments are well known, has spoken of "*Dockets* which *betray* a *taint* and *leaven* of suspicion." This unhappy expression drew forth the sarcastic criticism of Lord Brougham. In another place, the noble civilian observes, that "when the claimant steps out of his affidavit, he steps into empty space!" "To *travel* out of the *record*," was also a favorite expression of his—although

"Oxford's fav'rite son.————"

Mr. (afterwards Sir R.) Dallas, who was a junior counsel for Warren Hastings, is reported to have said in one of his speeches—"now we are advancing from the *starlight* of *circumstantial evidence*, to the *daylight of discovery;* the *sun* of *certainty* has *melted* the darkness,—and *we have arrived at the facts admitted by both parties.*" "When I cannot talk sense," says Curran, "I talk metaphor."

Fearne, who was an accomplished classical scholar, speaking of some moot-question in our law, observes, that it "hath been a *point* that hath long *walked* in Westminster hall."

It has been a usual complaint that the difficulty of understanding law, is greatly aggravated by the barbarous phraseology in which the lawyers write.

An M.D. once reproached a learned counsel, with what Mr. Bentham would call the "uncognoscibility" of the technical terms of law. "Now, for example," said he, "I never could comprehend what you meant by *docking an entail.*" "My dear doctor," replied the barrister, "I don't wonder at that, but I will soon explain the meaning of the phrase; it is doing

what your profession never consent to—*suffering a recovery!*" Technical terms must always seem uncouth, and be unintelligible to those to whom the science in which they are used is unknown, and perhaps abstractedly speaking law phrases are not one whit more barbarous and uncognoscible than those of any other science.

The phrases used in Scottish law are even more difficult and obscure, than those in use on this side of Tweed; and this arises from the circumstance that the Scotch lawyers employ words in ordinary use in a certain technical sense. When a judge wishes to be peremptory in an order, he ordains parties to *condescend;* when he intends to be mild, he recommends them to *lose* their pleas. When anybody thinks proper to devise his estates for the benefit of the poor, he is considered by the law of Scotland, to *mortify* them. Witnesses are brought into court upon a *diligence*, and before they can be examined, they must be *purged.* If a man loses his deceased elder brother's estate, it is called a *conquest!* The elegant phrases of "blasting you at the horn," "poinding your estate," "consigning you to the Fisc," exceed any barbarisms for which Westminster hall need to blush. We have, however, assuredly some phrases which sound strange in laymen's ears—*docking an entail*—*seised in fee*—villains in gross, &c.

When Sir Thomas More was at Bruges, some bold doctor offered a challenge to the world, to dispute on any given subject. More readily accepted the challenge, and proposed the following question: "Whether beasts taken in withernam can be replevied?" This question, touching a point of our municipal law, abashed the sophist, who pretended

to universal knowledge, and who, at once, withdrew from the field.

This suggests to us another anecdote. Shortly after Lord Keeper Williams (who had never received a legal education) had taken his seat in chancery, "one of the bar," says his biographer, Dr. Hacket, "thought to put a trick upon his freshmanship and trouled out a motion crammed like a granada with obsolete word, coins of far-fetched antiquity, which had been long disused, worse than Sir Thomas More's *Averia de* [in] *withernam* among the masters of Paris, [Bruges]. In these misty and recondite phrases, he thought to leave the new judge feeling after him in the dark, and to make him blush that he could not give answer to such mystical terms, as he had conjured up. But he dealt with a wit, that was never entangled in a bramble-bush; for, with serious face, he answered him in a cluster of the most crabbed notions, picked out of metaphysics and logic, as categorematical and syncategorematical, and a deal of such drumming stuff, that the motioner, being foiled at his weapon, and well laughed at in court, went home, with this new lesson, that he that tempts a wise man in jest, shall make himself a fool in earnest." The absurdity of the terms and questions with which the writings of the old schoolmen are stuffed fully equal, or, rather, much surpass, those of our common law. Mr. Roscoe very properly inquires whether the following question would not have puzzled the braggodocio of Bruges as much as that of Sir Thomas More.. "*An prœter* esse reale *actualis essentiæ, sit aliud* esse necessarium *quo res actualiter existat?*" That is,—"Whether, besides the real being of actual

being, there be any other being necessary to cause a thing to be?"

There is a certain expression in "our legal tongue" which is apt to puzzle the student, and one perhaps it would be difficult to explain, consistently with good sense. When any fact is stated in terms so precise and defined, that no implication to the contrary can possibly arise—such a statement is said to be "certain, to a certain extent, in every particular."

Many of our law terms are derived from the Norman-French; some from the Latin. We need hardly observe, that in former times Norman-French was the especial language of the law. The history of our law-tongue displays it as having undergone a variety of changes.

"The Frenchmen," says Fortescue, "after their coming into England, reckoned not the accounts of their revenues but in their own language, lest they should be deceived therein; neither had they delight to hunt and exercise other sports and pastimes, and at dice-play and the hand-ball but in their own proper tongue. Wherefore, the Englishmen, by much using of their company, grew in such a perfectness of the same language, that at this day, in such plays and accounts, they use the French tongue. And they were wont to plead in French, until by force of a certain statute that manner was much restrained." This statute was the 36 Edward III, the preamble of it recites that, "The laws, customs, and statutes, of this realm are not commonly known, and they are pleaded, declared upon, and decided in the French language, *which is much unknown in this kingdom;* so that parties to suits do not know what is said for them or against them by their serjeants and pleaders," &c.

It then enacts that all pleas, &c., shall be pleaded, &c., in English and entered in Latin. But the French law-terms, as being more significant, were still, and are now, continued in general use. In the reign of George II, an act was passed, requiring that all the records should be enrolled in English. Whether or not the change has produced the desired effect, and parties are now better than heretofore acquainted with whatever is said for or against them, may be doubted. But an appearance, at least, of mystery has been removed.

The following is a specimen of the extraordinary jargon, composed of English, French and Latin, which was spoken at one time by the lawyers. It is taken from minutes of charges delivered to different grand juries, by Sir Geo. Croke, judge, in the reigns of James I and Charles I. The jury are directed to inquire, "de ceux que voila purtraiture le picture del Dieu semble al un homme one gray beard; car ceo est un damnable offence, il n'est d'etre measures. Heaven is his throne and earth is his footstool, et pur ceo ils que voile, undertake de measure. Dieu doyent ruents, higher than the heavens cujus mensura (commene un dit) est altior cœlo, latior terra, et profundior mare." In another place he informs the grand jury, "Car jeo dye pur leur, amendment, ils seant semblable als vipers laboring pur eat out the bowells del terre, which brings them forth. De Jesuits leur positions sont damnable, La Pape a depuser Royes, ceo est le badge et token del Antichrist. Doyes etre, careful a discover eux. Receivers of stolen goods are semblable a les horse leaches, which still cry, Bring, Bring." The fashion of speaking French in this country in ancient days, produced a most extraordi-

nary jargon of which law-French is the legitimate descendant. It is to this jargon that Chaucer alludes in his prologue to the Prioress's Tale.

"And French she spake ful fetously,
After the scole of Stratforde at Bowe,
For Frenche of Paris was to her unknowe."

After this time, to pronounce law-French like French, at the exercises or mootings in the inns of court, was punishable. It is not likely, however, that many convictions ensued this law. In Chaucer's days, the lawyers seem to have been fond of using their elegant tongue, not simply in their pleadings, but also in conversation. "The man of law" in the Canterbury Tales, says,

"Hoste (quoth he) de pardeu jeo assent."*

The enormous size of our law libraries is an evil of comparatively recent growth. At the beginning of the 17th century, Dr. Wynne told Mr. Justice Finch, and with a sneer, as though he held it a reproach, "that all the common law books in the realm might be carried in a wheel-barrow." Quaint old Fuller treats the matter in another light. "I cannot but admire," he says, "at the comparative paucity of the books of our common law, in proportion to those written of the civil and canon law. Oh, how *corpulent* are the *corpuses* of both those laws! besides their *shadows* are far bigger than their bodies;

* From an ancient manuscript quoted by Hickes in the preface of his Thesaurus, we learn that English begun to be the language in which schoolboys construed their lessons in the reign of Richard the Second.

their glosses larger than their text. Insomuch, that one may bury two thousand pounds and upwards, in the purchase, and yet hardly comprise a moiety of them: whereas all the writings of the common law with all the year books belonging thereunto, may be bought for threescore pounds or thereabouts."

Coke, in his preface to his reports, speaks thus of the principal works in the law libraries of his time. "To the former reports, you may add the exquisite and elaborate commentaries of Master Plowden, a grave man and singularly learned; and the summary and fruitful observations of that famous and most reverend judge, Sir J. Dyer, late chief justice of the Common Pleas, and mine own simple labors: then have you fifteen books or treatises, and as many of the reports, beside the abridgements of the common law; for I speak not of the acts and statutes of parliament, of which there be divers great volumes." From this we may gather, that in Coke's time, a lawyer was compelled to be acquainted with something more than thirty-six volumes; and, having them on his shelves, he was considered in possession of a complete law library.* In ancient times, the reports, which now form so large a proportion of a lawyer's library, were undertaken, according to Coke, by "four discreet and learned professors of the law, selected by the kings of

* For the information of our legal friends, we beg to give a list of what would have been considered by a lawyer of Elizabeth's time a tolerably well furnished law library. The Year Books Keilway, Plowden, Dyer, Coke: these were his "reports." The text-books were Bracton, Fleta, Glanvil, Mirrour, Littleton, Perkins, Finch's Law, Fitzherbert's Natura Brevium, Doctor and Student, West's Symboleography, (an anticipation of Bythewood's Precedents,) and Crompton on Courts.

this realm. Their duty, he states, as being "to report the judgments and opinions of the reverend judges, as well for resolving of such doubts and questions wherein there was diversity of opinion, as to fix the genuine sense and construction of such statutes and acts of parliament as were, from time to time, enacted." These reporters received a stipend from the king. [Pref. Plowden, Rep.] The period during which the proceedings of the court were thus reported is uncertain. Sir Edward Coke considered that it commenced with the reign of Edward III, and ended with that of Henry VII. Douglas, in his preface to his reports, says, that it terminated in the beginning of Henry the Eighth's reign. (See also Pref. to 5 Mod. 6.)

It is generally supposed that the Year Books—a set of reports in law French and extending from the times of Edward II to those of Henry VIII, or, at least, a portion of them—were the work of these stipendiary reporters. In reference to the Year Books, Roger North observes, "it is obvious what deference ought to be had to them, more than to the modern reports; for, passing by their very short and material rendering the sense of the pleaders and of the court, it must be observed that the whole cause, as well the special pleadings as the debates of the law thereupon, were transacted or alleged at the bar; and the prothonotaries, *ex-officio*, afterwards made up the records in Latin. *And the court often condescended to discourse with the serjeants about the discretion of their pleas, and the consequences, with respect to their clients. And the court did all they could to prevent errors and oversights.*"

The first collection of reports after the year books,

is that of Edmund Plowden, whom Daines Barrington has denominated "the most accurate of all reporters." This eminent man, after spending three years at Cambridge in the study of philosophy and medicine, began, probably at some Inn of Chancery, in his twenty-eighth year, to apply himself to legal studies; but shortly afterwards, for a reason not known, entered at Oxford, and was, in four years, admitted by that university to practice physic and chirurgery. In the thirty-fifth year of his age he resumed his legal studies, and was soon, to borrow the quaint expression of Anthony à Wood, "accounted an oracle of the law." His rise in his profession was much obstructed by his adherence to Catholicism; but his reputation was extensive, both for honesty, law, and industry. "And, an excellent medley is made," says old Fuller, "when honesty and ability meet in a man of his profession." It is said, so devoted was he to his books, that for three years he never went out of the Temple. His famous commentaries, embracing reports of cases during the reigns of Edward VI, Mary, and Elizabeth, were published in 1571. For the most part, these reports were revised by the judges, whose opinions they contain.

To these, followed the reports of Sir George Croke,* a worthy judge, who is described by Sir

* Croke was descended from an ancient family, whose real name was Le Blount, which in consequence of their having taken the losing side in the wars of York and Lancaster, they changed to Croke. Croke's reports are usually quoted according to the reigns to which they refer—Elizabeth, James, Charles. A little barrister, named Morgan, in arguing a case in the King's Bench, quoted so frequently from Croke Charles, Croke James,

Harbottle Grimstone, as having "attained to a profound judgment and science in the laws of the land, and to a singular intelligence of the true reasons thereof, and principally in the forms of good pleading." "He heard," says Grimstone, "patiently, and never spake but to purpose, and was always glad when matters were represented unto him truly and clearly: he had this discerning gift, to separate the truth of the matter, from the mixture and affection of the deliverer, without giving the least offence. He was resolute and steadfast for truth; and as he desired no employment for vain glory, so he refused none for fear; and by his wisdom and courage in conscionably performing his charge, and carefully discharging his conscience and his modesty in sparingly speaking thereof, he was without envy, though not without true glory." These reports were originally written in law French, but not being published until 1571, when they were given to the world, by Sir Harbottle Grimstone, Croke's son-in-law, the editor was compelled to translate them in consequence of an ordinance of the long parliament to which we have already adverted. Grimstone appears to have felt this necessity a great grievance; for he observes, in a note

and Croke Elizabeth, that the whole bar became convulsed with laughter, and he, in consequence, obtained the *soubriquet* of "Frog Morgan." This worthy advocate was remarkable for his diminutive stature. The following anecdote has been related of him, as of many others. Before he was much known at the bar he was beginning to open a case, when Lord Mansfield, in a tone of grave rebuke, addressed him, "Sir, it is usual for counsel when they address the court to stand up." "I *am* standing, my lord," screamed Frog Morgan "I have been standing these five minutes!"

to his preface, that "there be certain legal formalities and ceremonies peculiarly appropriated and anciently continued amongst us; so as they seem now to be *essentials of the law itself;* and such I conceive are the writings of the orders and records of courts in such peculiar hands, the printing of law reports in their *proper letter* and *native tongue.*" In accordance with this view, and determining to sacrifice no *essential of the law* that he could help, he printed these reports in *black letter.* He observes, "this book passeth in surety of law, most of our former reports, which were chiefly composed of the sudden speeches of the justices, upon the motion of cases by the serjeants and counsellors at the bar. But most of the cases herein, are matters of law tried upon demurrer, or by special verdict, containing matters in law, which both were debated by those of the bar and bench, to the uttermost; and in the end allowed, or, for the cause shown, disallowed."

In modern times, reporting, like all other branches of law-literature, has been pursued as a source of profit, and a means of obtaining notoriety. The consequence has been, that our reports and text books have become numerous and lengthy—costly to the purchaser, to become profitable to the seller.

A young man desires to become known to the great brief-giving world. In vain has he, for many terms, displayed himself, duly apparelled in wig and gown in "King's or Common Bench;" in vain at circuit or session's ball has he flirted with the fair daughters of wealthy attorneys, or handed, with seducing air, Mrs. Sub-pœna to supper; his table remains as nude as ever, his fee-book is empty of figures. He forthwith makes up his mind TO WRITE A BOOK.

And lo! he inditeth one—Cruise's Digest, eked out with Sugden's Vendors and Purchasers afford the materials for one half; a few precedents copied from Mr. A. B———'s MSS. during pupilage, and a half-dozen modern acts of parliament, serve admirably to swell the volume—its price, and its author's reputation. A succession of productions of this kind succeed in nine cases out of ten, in forcing a young man into notice; and to this fact we may ascribe no inconsiderable portion of the books we have. An eminent barrister said the other day that if matters went on as they promised to do, he should be pointed out as the only man in Lincoln's Inn, who had not written a book. The numerous changes that are effected every session in different branches of our law, contribute something towards this overwhelming increase of law literature, interfering, however, sadly with works whose publication they just succeed. A publisher of a well known work on Criminal Law, had just brought out a new edition, when Sir Robert Peel's acts passed. It is said, he immediately applied to the statesman for compensation!

A certain special pleader was one day stating a variety of objections to the alterations introduced into the practice of our common law courts. These objections were clearly shown untenable by the individual with whom he was conversing: on which, finding himself pressed, he exclaimed, "all you say may be very good, but I have just published a new edition of my book, and more than one half will be left upon my hands." Dean Swift has said that if books and acts of parliament continued to increase, as they were

doing in his time, it would become impossible to be a lawyer.*

Much of the evils which the increase of the law has inflicted on the lawyer, have resulted from the number and complexity of the acts of Parliament which the legislature in their wisdom have passed. The titles of some of these acts are really curiosities. Take the 23d Geo. II, cap. 26, for example, "An act to continue several laws for the better regulating of Pilots for the conducting of ships and vessels from Dover, Deal, and the Isle of Thanet, up the rivers of Thames and Medway; and for permitting rum or spirits of the British Sugar plantations, to be loaded before the duties of excise are paid thereon; and to continue and amend an act for preventing frauds in the admeasurement of coals in the city and liberty of Westminster; and for ascertaining the rates of water-carriage upon the said river; and for the better regulation and government of seamen in the merchant service: and also to amend so much of an act made in the first year of the reign of King George I, as relates to the better preservation of salmon in the river Ribble; and to regulate fees in trials at assizes and nisi prius, upon records issuing out of the office of Pleas of the Court of Exchequer; and for apprehending of persons in any county or place; and to repeal so much of an act made in the 12th year of the reign of King Charles the Second, as relates to the time

* Lord Thurlow had once a dispute with the Earl of Stanhope respecting a certain act of Parliament. Upon investigation, it appeared that the chancellor was wrong—"Oh!" he exclaimed, in his gruff tones, "d—n the act. I can manage well enough with the common law; but as to the acts of parliament the devil himself couldn't recollect them all."

during which the office of Excise is to be kept open each day for the future; and to prevent the stealing or destroying of turnips; and to amend an act made in the 2d year of his present majesty, for the better regulation of attorneys and solicitors." From the number of subjects thus comprised in one enactment, the lawyer is compelled, in order to ascertain and possess the law on a certain subject connected with his profession, to search through a variety of provisions bearing no relation whatever to the matter of his inquiry.

The number of acts of Parliament which at present incumber the statute book, is most appalling. Many of them are obsolete; the purposes for which they were enacted no longer subsist, and some doubts have been entertained whether courts would carry them into effect. Still they continue to swell the bulk of the library, and to diminish the gains of the lawyer. By the 5th and 6th Edward VI, c. 23, it is enacted that no person shall make, to the intent to sell, any quilt, mattress, or cushions, "which shall be stuffed with any other stuff than feathers, wool, or flocks," upon pain of forfeiting the same. By the 3d and 4th Edward VI, c. 19, it is enacted that no person should buy any manner of oxen, or other cattle, except "in the open fair or market," and except for the team or dairy, upon pain of forfeiting double the value. There is an exception in favor of butchers. This act is confirmed by the 15th Car. II, c. 8. By the 25th Henry VIII, c. 13, it is enacted that no person shall keep more than 20,000 head of sheep, upon pain of forfeiting three shillings and fourpence per sheep.

It has been said by constitutional writers—the

phrase is somewhat profane—that Parliament is omnipotent. De Lolme has declared it can do every thing except make a man a woman, or a woman a man. This opinion of its own power, Parliament itself, at different times, appears to have entertained. In the days of "Bluff King Hal," it passed "an act for the abolishing of diversity of opinion in certain articles concerning Christian religion." (31 Hen. VIII, c. 14.) In the reign of George III, a bill was introduced into the House of Commons for the improvement of the Metropolitan watch. In this bill there was originally a clause by which it was enacted that the watchmen should be *compelled* to sleep during the day. When this clause was read in committee, a gouty old baronet stood up, and expressed his wish that it could be made to extend to members of the House of Commons; as *podagra* had, for many nights, to his great discomfort, destroyed his sleep, he should be glad to come under the operation of the enactment!

The carelessness with which our acts of Parliament are prepared is most remarkable. Lord Stanhope, in a speech in the House of Lords in 1816, mentioned that in a certain statute the punishment of fourteen years' transportation was imposed for a particular offence, "and that upon conviction one-half *thereof should go to the king, and one-half to the informer!*" It is not difficult to surmise how this mistake arose. The punishment, as originally inserted in the bill, was a fine, for which transportation was afterwards substituted; and when the alteration was made, sufficient care was not taken to see what other changes were thereby rendered necessary.*

* The following is the title of a modern act (5 and 6 William

We need hardly pursue this subject any further.

In allusion to the great increase of law books which took place in his time, Lord Mansfield has observed that "it did not increase the quantity of necessary reading, as the new books frequently superseded the old. When I was young," he adds, "there were few persons who would confess that they had not read a considerable part of the year books, whereas now no one would pretend to have done more than, in very particular cases, to have consulted them." Old Serjeant Maynard, whom Roger North admits to have been "the best old book lawyer of his time," had according to the same authority, "such a relish of the Old Year Books, that he carried one in his coach *to divert his time in travel*, and said he chose it before any comedy." To those who share the learned serjeant's taste, the year books are still open; but it is an undoubted advantage to the great body of our lawyers, that they are spared the necessity of a constant perusal of these ponderous folios, with their painful type, and crabbed style. Charles Yorke told Dr. Warburton, that if Blackstone's Commentaries had been published when he began the study of the law, it would have saved him the reading of twelve hours in the day.

This work, which has proved of so much advantage to the law student, was on its appearance greeted with the sneers and whispered censures of many of

IV, c. 8); "An act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof; and for the *more entire* suppression of voluntary and extra-judicial Oaths." The following name given to an act is quite Homeric: "The stage-coach Outside Passengers' Numerical Limitation Act."

our black letter lawyers. It became the fashion amongst a certain class to decry it. A gentleman, not long since dead, was told by one who prided himself on being of the old school, that there was scarcely one page in Blackstone in which there was not one false principle and two doubtful principles stated as undoubted law. Horne Tooke, who was always ambitious of a legal reputation, declared "that it was a good gentleman's law book, clear but not deep." It was in short, obnoxious to one charge, viz, that it was *intelligible*. Mr. Hargrave is reported to have said, that "any lawyer who writes so clearly as to be intelligible was an enemy to his profession." This will account for the unfavorable reception which Black stone's Commentaries met with from some.

## CHAPTER III.

### SKETCHES OF EMINENT LAWYERS.

Sir O. Bridgeman—Lord Macclesfield—Sir W. Blackstone—Lord Chancellor King—Lord Alvanley—Fearne—Bradley—Pigot—Sir Julius Cæsar—Mr. Justice Burnet—Booth—Sir Thomas Plumer—Lord Gifford—Sir W. Grant—Sir John Leach.

We subjoin a few notices of some eminent lawyers of whom we have hitherto said nothing.

Sir Orlando Bridgeman has been called by Mr. Serjeant Hill, the father of conveyancers. He was attached to the monarchical party during the troubles in the reign of Charles I; and when the parliament party obtained pre-eminence, he, with others, retired into the country and applied himself to the practice of conveyancing. "Betaking himself to his chamber," says North, "he became the great oracle not only of his fellow-sufferers but of the whole nation in matters of law—his very enemies not thinking their estates secure without his advice." A poet, if his claim to so high a title will be admitted, has thus celebrated his praises—

"To those excellent conveyancers, Sir Orlando Bridgeman and the worthy Mr. Godfrey Palmer:

Wise Greece and Rome did this in both combine
To make addresses to the Delphian shrine;

And with Divine Apollo to advise,
Was the preludium to an enterprise.
Few Englishmen dare purchase an estate
Unless your wisdom's unsophisticate
The title vouch. Ye can stop Hymen's way:
For portions, jointures, both sexes must pay
Due thanks. Wise fathers ranters keep in awe,
Craving from ye, the oracles of law,
Help to entail their lands; whilst yourselves be
Tenants of riches, of renown, in fee."

Sir Jeffrey Palmer, to whom these verses were equally addressed, was, like Bridgeman, warmly zealous for the royal cause. "During all the troubles of the times," says Roger North, "he lived quiet in the Temple, a professed and known cavalier; and no temptation of fear or profit ever shook his principle. He lived then in great business of conveyancing, and had no clerks but such as were strict cavaliers. One, I have heard, was so rigid that he could never be brought to write Oliver with a great O. And it was said, the attorney (Palmer was made attorney-general on the restoration) chose to purchase the manor of Charleton because his master's name sounded in the style of it."

In 1682, he published "Bridgeman's Conveyancer; being select precedents of Deeds and Instruments." Upon the dismissal of Lord Clarendon, the great seal was given to Bridgeman; but, according to Burnet, his practice having lain so entirely in the common law, he did not seem to know what equity was. "He labored very much," says Roger North, "to please everybody; and that is a temper of ill consequence in a judge. It was observed of him, that if a cause admitted of divers doubts, which the lawyers call points, he would never give all on one side, but either

party should have somewhat to go away with." Historians, following Burnet, have generally said that the chancellorship was taken from Bridgeman because he refused to put the great seal to a proclamation, dispensing with some penal laws; but this is untrue. There is no reason to doubt that his advanced age was the true, as well as the ostensible, cause of his resignation.

Although the profession have always considered THOMAS PARKER, LORD MACCLESFIELD, in point of abilities, as having worthily filled the seat of Lord Nottingham and Lord Somers, his name is almost unknown to the public, except in reference to his unhappy fate. He is said to have practised in Derby, as an attorney, for some years before he was called to the bar; but, as one of his biographers has observed, this is probably a mistake, as he entered at the Inner Temple, in 1683, and was called in 1691, "not many months after the expiration of the required term of studentship." He soon rose to distinction as an advocate; and, being elected member for his native town, Derby, became, in parliament, a powerful supporter of the whig administration. He took an active part as one of the managers in the impeachment of Dr. Sacheverell—one of the most ill-advised, and that is saying a good deal, that the whigs were ever engaged in. His political services soon obtained him his desired reward, and, on the death of Sir John Holt, he was appointed chief justice of the Queen's Bench. It is to this that Defoe alludes. Addressing the high church party, who regarded Sacheverell as a martyr, he says, "you are desired to take particular notice of her Majesty having severely punished Sir Thomas Parker, one of the managers of the House of

Commons for his barbarous treatment of the doctor, in pretending in a long speech to show, as he called it, the impertinence and superficial jingle of the doctor's speech. Her Majesty being, as you know, heartily concerned for this prosecution, hath testified her care of the doctor's character, in most justly punishing that forward gentleman, having condemned him for his boldness to perpetual confinement, being appointed to the constant drudgery of Lord Chief Justice of the Queen's Bench; a cruel and severe sentence indeed!" When Lord Cowper resigned the great seal on the formation of the Harley cabinet, strong efforts were made to induce Parker to accept it; but they were unavailing. Having been created Lord Parker, Baron of Macclesfield, by George the First, shortly after his accession, Parker was, in 1718, on the final retirement of Lord Cowper, appointed Lord Chancellor, and in 1721, created Viscount Parker and Earl of Macclesfield. After this, honors were showered upon him with a bountiful hand, by his royal master, who seems to have become greatly attached to him. His fall, however, was as sudden as his rise.

Shortly after the unfortunate failure of the South Sea speculation, it became known that a Mr. Dormer, one of the masters in chancery lately dead, had been engaged very deeply in the speculation, and had applied money of the suitors, which was in his hands, to defray his losses. The amount so appropriated was nearly £60,000. The indignation in the public mind, when this fact became known, was excessive—and, at last, rumors began to circulate, involving the character of the chancellor himself. These were not a little promoted by George, Prince of Wales, who considered that Lord Macclesfield had, by a judgment

he had given, when chief justice, unjustly deprived him of his parental rights. The chancellor finding the storm increase, at last, resigned the great seal. But his enemies, not satisfied with thus driving him from his office, a motion was made, and ultimately carried, in the House of Commons, to impeach him. In the articles of impeachment, he was charged with having appointed masters in chancery, extorting from them severally sums of money, varying from eight hundred, to six thousand guineas—they declared that the masters he had appointed were persons of inconsiderable substance and credit, and that he had represented them as being otherwise—that he had connived at the payment of the purchase money of their offices out of the suitors' money in their hands, and that inducements had been thus held out for needy persons to bid high for these places, seeeing how easily they might pay the purchase money—and that embezzlements to a great amount had been, consequently, practised in the offices of several of the masters. They further charged him with having assisted the masters in concealing their defalcations—with having borrowed, for his own use, large sums from them, out of the suitors' funds, and, finally, with having, corruptly and improperly, nominated a receiver to the estates of an infant, contrary to the nomination of the testamentary guardian, and in contravention of the statute of wards and liveries.

In support of the two last articles, no evidence was adduced. To the others, the ex-chancellor replied, that the sums he had received from the masters after their admission, were the voluntary presents, which were usually made on such occasions,* that

* Stat. 12 Rich. II, c. 2, prohibits the chancellor, &c., from

the persons he had appointed masters, were, in every respect, competent to their offices, and that he had not countenanced the masters in concealing their defalcations. The evidence against him on these points was clear, and the lords found him guilty, and he was adjudged to pay a fine of £30,000 to the king. The king, conscious that, however guilty his favorite might be, he had been attacked only because he was his favorite, declared his intention to pay the fine himself; and, by his direction, Walpole paid £1000 towards it. Next year, the minister intimated to Lord Macclesfield, that he was ready to pay another instalment of £2000. Unfortunately, a month or six weeks was allowed to pass beford the earl sent for

making justices of the peace or *other officers*, "for any gift of brocage, favor or affection." This act, however, although never repealed, had been, it is said, frequently disregarded in practice. When Lord Macclesfield on his trial, was about to call witness to show this, and prove that he had done no more than his predecessors—Lord Townsend stood up, and exclaimed, "My lords! I hope that you will not suffer witnesses to be produced, for this purpose; for that will only show that this sort of corruption is *hereditary!*" It is observed, that before Lord King, who succeeded Lord Macclesfield as chancellor, accepted the office, the salary was increased by £3500 a-year, in order, as it was said, to compensate the chancellor for his loss of profit, occasioned by the judgment of the Lords, in Lord Macclesfield's case. Again—Lord Chancellor King in a speech observed, that when the Lords were discussing a bill to prevent the Lord Lieutenants of counties selling the clerkships of the peace, a Lord moved the insertion of a clause, forbidding the sale of masterships in chancery, which, upon a division, was negatived. The 12 Geo. I, c. 32, which has created the office of Accountant-General of the Court of Chancery, has precluded the possibility of any improper use of the suitors' funds for the future.

the money, and in the mean time the king died; and Walpole said, that as he and the king had a running account, he could not tell at once in whose favor the balance was, and he consequently was unable for the present to pay the promised sum. Lord Macclesfield never could succeed in getting any of it. The ex-chancellor survived his fall by six years. A strange anecdote is told respecting his death. A few days before it happened, Dr. Pearce, Bishop of Rochester, called on him, and found him walking up and down the room, suffering from a stranguary which he had, and which he said had come the night before. He then said to the bishop, "my mother died of this, the eighth day after it came on, and so shall I." On the eighth day Dr. Pearce called on him, and found him in bed, dying. Standing round his bedside were his son, and Lady Parker, and Mr. Clarke, afterwards Sir Thomas, and Master of the Rolls. About ten at night Lord Macclesfield cried out, "is my physician gone?" and on being told that he was, immediately exclaimed, "and I am going too; but I will close my eyes myself—" which he did, and instantly expired. With all the corruption proved against him, he was an able lawyer and a worthy man—liberal towards men of letters—and universally beloved by all admitted within his circle.

The following anecdote has been related of him. In order to prevent the violation of the law, and to discourage the practice of travelling through the town of Abingdon, in the time of divine service, the mayor of the corporation ordered a rope to be thrown across the principal street. When Lord Macclesfield was about to pass, on his journey, he found the proper officers at their post, who refused to lower the rope

till the service was ended. Instead of resisting the order, Lord Macclesfield quietly descended from his carriage, and entered the church, where he remained until the conclusion of the service, when he re-entered his carriage, and expressed his approbation of the regulation.

SIR WILLIAM BLACKSTONE, the author of the well-known "Commentaries on the Laws of England," was the son of a silkmercer in Cheapside; and, losing his father when very young, received his education at Charter-house and Oxford. Being anxious to obtain a professorship at his university, when the chair of civil law became vacant, he solicited and obtained the interest of Mr. Murray (afterwards Lord Mansfield), with the Duke of Newcastle, chancellor of the university. During the interview that Blackstone had with his grace on the subject, the duke, addressing him, said, "Sir, I can rely with confidence upon the judgment of your friend, Mr. Murray, as to your competency to deliver law lectures in such a manner as may prove beneficial to the students, and I do not doubt that I may safely rely on your exerting yourself on our behalf, whenever any thing in the political hemisphere is agitated in the university." "Your grace," replied Blackstone, "may be assured that I will discharge my duty of giving law-lectures to the best of my poor ability." "Aye! aye!" said the duke, "and your duty in the other branch too." Mr. Blackstone merely bowed an assent, and in a few days Dr. Jenner was appointed to the vacant professorship.

After struggling at the bar for seven years, with scarcely any success, he resolved to abandon his pro-

fessional prospects, and retire to his fellowship. This he did, and began to execute a plan he had previously formed, of delivering lectures upon the laws of England. The novelty of this design did not prevent the formation of a numerous class, for whose assistance, by way of a syllabus of his course of tuition, he published "An Analysis of the Laws of England."

Mr. Viner having bequeathed, together with other valuable property, the copy-right of his "Abridgement" to the university, for the endowment of a professorship of the common law of England, with certain fellowships and scholarships attached, Blackstone was unanimously elected the first Vinerian professor. This immediately brought him into notice. It has been said, so greatly were his lectures admired, that he received an invitation from the preceptors of the prince of Wales (afterwards George III), to deliver them before his royal highness; but this offer Blackstone was compelled to decline, as it would have been incompatible with his duties at the university. After this he returned to the bar, where he obtained considerable practice. He was appointed solicitor-general to the queen, and, in 1765, published the first volume of his "Commentaries." In the course of the four succeeding years, the three other volumes appeared. For this work, which has obtained so great a popularity, the author is said to have received but a trifle. It, however, tended very considerably to exalt his fame, and probably paved his way to the bench, to which he was ultimately raised. He died in 1780. His manner is said to have been stern and forbidding. His temper was irritable to an extreme, in proof of which the following anecdote has been related. Shortly after he had taken his doctor's

degree, he called at the shop of a bookseller, with whom he was in the habit of dealing. The bookseller intending to address him in a particularly respectful manner, called him, in the course of conversation—Doctor. Upon this, Blackstone burst into a violent rage, and stormed and raged so vehemently that the unfortunate and offending bibliopolist at one time apprehended that he should have been obliged to send to St. Luke's for assistance!

Severe and punctilious as a judge, his private life was not stained by any vices. Lord Stowell, says, that "though a sober man, he composed his Commentaries with a bottle of port before him, and found his mind invigorated and supported in the fatigue of his great work by a temperate use of it."

As a public man he left few records of his general usefulness. In the service of *his* university, especially of *his* college, and in the improvement of *his* native town (Wallingford), he is said to have exerted himself with laudable industry. The new western road over Botely-causeway is said to have been planned by him; and his motive in its design is said to have been, not only a regard to general convenience, but a wish to improve the value of the property of a nobleman, in the settlement of whose affairs *he* had been engaged. His services in the cause of law reforms are soon recorded. In his day, our criminal jurisprudence was written in letters of blood; his labors in this department were *to aid in the establishment of penitentiaries.* The system by which rights were enforced, and property was protected, was in his time tardy in its operation, both expensive and cumbrous—he effected no change in

this branch of our law, *except in obtaining for the judges an increase of salary.*

Lord Chancellor King was nearly related to the illustrious Locke, and was the only son of a grocer and drysalter in Exeter. Originally intended for the same trade as his father, he, however, by diligent study, and by the production of a very successful work on divinity, in his twentieth year, induced his friends to emancipate him from the counter, and allow him to prosecute his studies for the bar, to which, after nine years diligent and profitable application, he was called in 1688. He obtained an almost immediate practice, and in 1700 took his seat in parliament, where he sat under the Whig banner. He derived considerable advantage from a correspondence with Locke. In 1705, he was made recorder of Glastonbury, and, in a year or two afterwards, he obtained the same office in the corporation of London, with knighthood. He gained much celebrity by his defence of the noted Whiston, on which occasion his theological knowledge stood him in good stead, as also in the famous case of Sacheverell. Upon the removal of Lord Trevor in 1712, Sir Peter King was appointed to his seat and sworn of the privy council. Very little is known of the manner in which he executed his duties; but if we may credit the Duke of Wharton in the True Briton, he deserved great praise. We may cite one amusing instance of a case in which he had to decide. An indictment was preferred against a country gentleman and his farm servant for slitting the nose of a gentleman of the name of Crisp, with intent to disfigure and maim. In order to avoid the consequences of

their being found guilty under the act 22 & 23 Car. II, c. 1, the counsel for the defendants pleaded that they intended to *murder* the man, not to *disfigure* him! The judge, however, speedily disposed of this plea. During his chief-justiceship, complaints were made that the Fleet prisoners were immured in unwholesome confinement in the prison. The excuse was the insecurity of the prison. "Then you may raise your walls higher, but there shall be no prison within a prison," was King's memorable reply.

In 1725, upon the disgrace of Lord Macclesfield, King was raised to the chancellorship and peerage, with a pension of £6000 a-year added to the usual emoluments of office, which, as compensation for the decision, that the sale of subordinate offices was illegal, was increased by £1200. The first, and, in fact, the most important duty which he had to undertake, was providing securities against the recurrence of similar frauds to those to which Lord Macclesfield was a party. This he did well—but after that, little praise can be accorded to him: his intellectual and physical powers have been held unequal to the task, though he labored until his health sank under the exertions. In the year 1730, a lethargic disease of an apoplectic character weighed down his energies; but, through the good principles and strict integrity of Sir Philip Yorke and Mr. Talbot, generally retained by adverse parties, the suitors, according to Mr. Bentham, experienced little injury therefrom. Most of the cases, through the weak health of his lordship, were heard at his house instead of Westminster hall or Lincoln's inn. His decisions, however, did not always give such satisfaction as some suppose, which is proved by the many cases subsequently impeached

or modified. Whiston accuses him of coldness towards his old friends and the principles of his youth; and relates an anecdote, which we may give in his own words: "When I was one day talking with the Lord Chief-justice King, one brought up among dissenters at Exeter, under a most religious, christian, and learned education, we fell into a dispute about signing articles which we did not believe, for preferment; which he openly justified, and pleaded for it, that we must not lose our usefulness for scruples. Strange doctrine in the mouth of one bred among dissenters, whose whole dissent from the legally established church was built on scruples. I replied that I was sorry to hear his lordship say so; and desired to know whether in their courts they allowed of such prevarication or not. He answered they did not allow of it. Which produced this rejoinder from me, 'Suppose God Almighty should be as just in the next world, as my lord chief justice is in this, where are we then?' To which he made no answer. And to which the late Queen Caroline added, when I told her the story, 'Mr. Whiston, no answer was to be made to it.'" In 1733, through the decay of his bodily and mental faculties he relinquished the seals, and on the 25th July, 1734, died in the 66th year of his age. By his wife he had four sons, all of whom successfully enjoyed the title, and two daughters. The present Lord is a lineal descendant of the youngest son Thomas. His motto was one admirably adapted to the man, characteristic and fitting; "Labor ipse voluptas;" which gave rise to the following poetical effusion, with which we conclude our notice of Lord chancellor King:—

"Tis not the splendor of the place,
The gilded coach, the purse, the mace,
Nor all the pompous train of state,
With crouds that at your levee wait,
That make you happy, make you great,
But whilst mankind you strive to bless
With all the talents you possess;
Whilst the chief joy that you receive
Arises from the joy you give;
This takes the heart, and conquers spite,
And makes the heavy burden light;
For pleasure rightly understood,
Is only labor to do good."

Sir Richard Pepper Arden, afterwards Lord Alvanley, was appointed Master of the Rolls in 1789, and Chief Justice of the Common Pleas in 1801. His decisions in general gave satisfaction, and appeals were not more numerous than under Sir Lloyd Kenyon. They were calculated at seven per cent. The business of the court increased much, especially concerning mercantile and theatrical matters, and disputed wills, ill drawn. From the mistaken adoption of legal words and other causes, this was a matter of no light difficulty at times, when the meaning was often doubtful. On one occasion the counsel asserted that it was the duty of the court to find out the meaning of the tesator. "My duty, sir, to find out his meaning!" exclaimed Lord Alvanley. "Suppose the will had contained only these words, '*fustunfunnidos tantaraboo*,' am I to find out the meaning of his gibberish?" His decision in the famous case of Thellusson, concerning the absurd accumulation of property, contemplated by this monomaniac, is well known. Arden was created Lord Alvanley at the same time that he was raised to the chief seat in the Common Pleas. His warmth

of temper sometimes engaged him in altercations with "brother Best" and others; and, it is said, that his want of gravity rendered it impossible that he could have justified the saying, "as grave as a judge;" that he would laugh as merrily as a comic actor, and talk in a loose careless manner, as if he had been the president of a debating society, or a free-and-easy. Upon one occasion, when trying a case in the Hall, and an act of parliament was in question, a learned serjeant quoted a section of it, but was interrupted by Lord Alvanley's saying there was no such clause in the act.

"Why but, my lord, here it is," said the serjeant.

"Never mind, I tell you I have looked, it is not there," retorted the judge.

"I beg your lordship's pardon, but here it is in the book, read it."

The learned judge at length took the book, and having read it, exclaimed, "Oh, true, here it is sure enough, as sure as God is in Gloucester!"

He is not to be ranked among the great English judges; but a very respectable second place appears to be about the position to which he is entitled. But he did not enjoy this position long; for though the duties were not such as to injure most men's health, but rather otherwise, his constitution was originally weak, and he was seized with a mortal illness when going to the House of Lords, to preside as speaker, March 16, 1804, and died in three days afterwards of inflammation of the bowels. His manner was extremly pleasant in society, and his company was always courted by the stately Pitt, who enjoyed his liveliness the more perhaps from his own want of this attribute. His temper was rather quick and hasty, when he went far to justify the Frenchman's traves-

tie of his name—*Mons. Povrie Ardent.* It is related, that a friend of his was once startled, when Alvanley was just going to read prayers to his domestics, according to custom, by his exclaiming "*Will no one stop that fellow's d——d fiddling?*" One of the servants it appeared had remained behind, and was amusing himself in a more agreeable manner than at the family devotions. But such resentments were momentary, and the equanimity of his temper was always speedily restored.

Charles Fearne was one of the most remarkable men that ever adorned his profession. He had received an excellent education, and was well versed in the classics, and the mathematical and physical sciences. He was an accomplished mechanic and chemist, and had obtained a patent for dying scarlet, and solicited another for a preparation of porcelain. He had written in Greek an admirable treatise on the Greek accent, and another on "the Retreat of the Ten Thousand." He invented a new kind of musket, smaller but of greater power than those in use. When he entered himself for the bar, it was with no settled intention of pursuing it as a profession; indeed it is probably owing to his misfortunes that he ultimately applied his mind that way. It appears in his practice of experimenting in chemistry, he thought he had discovered the secret process by which the morocco leather is dyed red. The ingredient by which this color is produced is kept secret by the Maroquoniers of the Levant. Flushed with this discovery, and the conviction that it would be the foundation of his fortunes, he connected himself in an evil hour with a needy and unprincipled partner, who, involving him in expenses, in effect induced him to abandon the project and apply

himself to the law. He told Mr. Butler, that when he had taken this resolution, he burnt all his books, which bore no relation to law, and wept over the flames. He said, the books he most regretted, were the Homilies of Chrysostom, and the work to which the "goldenmouthed" preacher was himself so much attached—Aristophanes' comedies.

He is said to have been employed by a solicitor in the Temple, to abstract and arrange an intricate series of papers, a task for which his "analytical head" especially qualified him, and which he discharged so well, that it at once obtained for him a considerable business. After he had acquired a certain reputation and practice, he resolved to recur to his original pursuits, and managed to contract his business to an extent just sufficient to meet his wants and to enable him to give up the rest of his time to experimental philosophy. He invented a new kind of optical glass, a machine for transposing the keys in music; and gave many useful hints in dyeing various kinds of stuff. These he would call his dissipations. He was very fond of aquatic recreations, and would often amuse himself with his boat on the sea until the calls of business became urgent, and then shaking off his indolence, would apply himself to work. His application and despatch were unrivalled. One trait of his character deserves mention here. His father, who was not rich, was at great expense in giving Fearne a good education; and, on his entrance at the Temple, presented him with a few hundred pounds to buy chambers and books. When his father's will was opened, Fearne found his name as co-legatee with a younger brother and sister. Well aware, how much the family property had been diminished on his account,

he refused to receive his share. "My father," said he, "by taking such uncommon pains with my education, no doubt meant it should be my whole dependence; and if that won't bring me a competence, a few hundred pounds will be a matter of no consequence."

Mr. Fearne's first publication was an Historical Legi-graphical Chart of Landed Property in England, which is an analytical table, exhibiting in one view the tenures, mode of descent, and power of alienation of land from the Saxon times. This was followed by the famous "Essay on the learning of Contingent Remainders and Executory Devises." This was, in the first instance, a short work of ninety-eight pages, but in more recent editions, was greatly enlarged.

Ralph Bradley, the eminent conveyancer, was another instance of how surely merit will subdue difficulties of the most formidable character. He was born in the lowest ranks of life. The pursuits of his earlier years are unknown—it is believed they were as humble as his origin. He soon, however, turned his attention to the law, and ultimately practised for some time as an attorney, but conscious he was fit for better things, resolved to enter himself for the bar, which he did; and in due time was called by the society of Gray's Inn. He established himself as a conveyancer at Stockton-upon-Tees, where he practised for upwards of half a century with the greatest success. During this period he is said to have managed the affairs of the whole of the county of Durham, and to have obtained a reputation amongst his metropolitan brethren. They consulted him on many points of the greatest magnitude, and always treated his opinions with the greatest deference. Several of

his pupils became afterwards eminent, amongst whom were the names of Ritson, Walker, and Holiday—names not yet forgotten. Although he lived in a style of imposing magnificence, he died in the possession of a fortune of upwards of £40,000. This, by bequest, he directed to be employed "in the purchase of books calculated to promote the interests of virtue and religion, and the happiness of mankind." This bequest was set aside by Lord Thurlow for uncertainty. That the physician who heals others, can often not heal himself, and that the lawyer whose artistic skill enables him to obtain fulfilment for the desires of others, is often incompetent to secure the fulfilment of his own, are truths too generally known to require from us, in this place any observation on this circumstance.

NATHANIEL PIGOT was also a draftsman of the most consummate skill. Excluded as a Catholic from practising in the courts, he employed himself solely as a conveyancing counsel, and acquired a business and reputation never equalled before. His drafts were conspicuous for distinctness, and, if we may use the expression, point. He did not resort to that mode of obviating the ill effects of carelessness or ignorance which has sometimes characterized the conveyances of a later day; namely, the introduction of general words and sweeping clauses, under which the interest meant to be conveyed must pass, even if the particular words introduced will not serve their end.

SIR JULIUS CÆSAR, the son of Cæsar Adelmare, an Italian Physician of good repute, settled in England, was born at Tottenham, in 1555, and after passing through various gradations, was made judge of the

Admiralty Court. From this, he was raised to the mastership of the Rolls, which he held until his death in 1636. He was a man of boundless benevolence, and used, while presiding at the Admiralty Court, to relieve the poor suitors so liberally, as almost to impoverish himself. "A gentleman," says Lloyd, "once borrowing his coach, which was as well known to the poor as any hospital in the kingdom, was so followed and encompassed by the London beggars, that it cost him all the money in his purse to satisfy their importunity, so that he might have hired twenty hackney coaches on the same terms." The following lines are from his pen, and deserve, from their quaintness, a place in our collection. The first stanza was written by his grandfather the Marquis of Winchester, when asked how he had lived in the times of Edward IV, Richard III, Henry VII, Henry VIII, Edward VI, Queen Mary, and Queen Elizabeth.

"Late supping I forbear,
Wine and women I forswear;
My neck and feet I keep from cold;
No marvel then if I be old.
I am a willow, not an oak;
I chide, but never hurt with stroke.

"Never let wrath dwell in thy house;
  Wrath reason doth subdue;
It breeds sharp fevers, and by it
  May sudden death ensue.

"Awake with joy, arise with speed,
Attire thyself as thou hast need;
Wash hands and face, and comb thy head;
Pray and peruse the holy read.
When to thy calling thee apply,
Let not extortion gain thereby;

So that thou do to every wight,
As thou wouldst him to do thee right."

We think we may with propriety notice MR. JUSTICE BURNET in this place. He was the third son of the famous Bishop of Salisbury, whose feelings of morality he scandalised by his wild excesses. While at the Temple, he belonged to the association called the Mohock Club, who borrowed their name from a tribe of Indians, supposed at that time to be cannibals. The president was called the Emperor of the Mohocks. Their object seemed to have been mischief, and, as the members were generally attached to the whig party, their vengeance was usually directed against the tories. After drinking themselves up to a proper point of courage, these worthies would sally out into the streets, and attack every passenger whom they met with, that was unprotected. Some they knocked down, others they stabbed or maimed. Their barbarities appear to have excited the terror of Swift, who always expected to be murdered by them. In one of his letters to Stella, he writes—"Young Davenant was telling us how he was set upon by the Mohocks, and how they ran his chair through with a sword. It is not safe being in the streets at night. The Bishop of Salisbury's son is said to be of the gang. They are all whigs. A great lady sent to me, to speak to her father, and to the lord treasurer, to have a care of them, and to be careful likewise of myself." Burnet's dissipated habits appear* to have

* Dr. Arbuthnot, in his satire on Bishop Burnet, called "Notes and Memorandums of Six Days preceding the Death of a Right Reverend Divine," thus alludes to Mr. Justice Burnet—"Order the family to come up stairs at seven. Resolved

caused great uneasiness to his father, who one day, seeing him in a very melancholy mood, asked what he was thinking of. "A greater work than your lordship's History of the Reformation." "And what is that? Tom," asked the bishop. "My *own* reformation, my lord," rejoined the young rake. "I shall be heartily glad to see it," said his father, "but I almost despair of it." He commenced political pamphleteer in the service of the Whigs. His principal production of this kind bears the following title, "A *certain* Information of a *certain* discourse which happened at a *certain* gentleman's house, in a *certain* county; written by a *certain* person then present, to a *certain* friend now at London; from whence you may collect the *certainty* of the account." This title was imitated in a poor burlesque of a work he wrote on his father's character, "A *certain* dutiful Son's Lamentation for the death of a *certain* right reverend; with the *certain* particulars of *certain* sums and goods that are bequeathed him, which he will most *certainly* part with in a *certain* time." Burnet wrote an imitation of a Tale of a Tub, which neither obtained nor deserved the popularity of the original. He also, with

to preach before them extempore. . . . . Family comes up. Survey them with delight. The damsel Jane has a wicked eye. Robin seems to meet her glances. Unsanctified vessels. Children of wrath; Look again at Jane. A tear of penitence in her eye. Sweet drops! Grace triumphs! . . . . Sin lies dead! *Wish Tom were present.* He might be reformed. Consider how many sermons it is probable Tom hears in one year. Afraid not one. Alas the Temple! Alas the Temple! The law eats up divinity; it corrupts manners, rains contentions amongst the faithful, feeds upon poor vicarages, and devours widow's houses without making long prayers. Alas the Temple! Never liked that place since it harbored Sacheverell."

Mr. Ducket, published a travestie of the first Book of Homer, for which Pope honored them with a place in the Dunciad—

"Behold yon pair, in strict embraces join'd,
How like in manners, and how like in mind;
Equal in wit, and equally polite,
Shall this a Pasquin, that a grumbler write.
Like are their merits, like rewards they share;
That shines a consul—this, commissioner."

This refers to Burnet's appointment as consul at Lisbon, which took place at this time. During the time he held this office he had a quarrel with the ambassador, on whom he revenged himself in the following manner. Employing the same taylor as his lordship, and having learned what dress he intended to wear upon a grand fête day, Burnet had liveries made for his servants of precisely the same pattern, and appeared in a plain dress himself. He was, however, recalled, together with his lordship, and then resumed the study of the law, and was, after holding the office of king's serjeant, made one of the judges of the Common Pleas. To show how little his love of a joke was affected by his exaltation, the following anecdote may be mentioned.

When in the country, as he was returning home by a rough road, his coach broke down. On the coachman afterwards begging his pardon, he good humoredly observed, "Oh! never mind, John: you have only fulfilled the prophecy, that 'the judges shall be overturned in stony places.'"

Mr. James Booth was the father of the modern school of conveyancing. His knowledge of law, especially of the nature and effects of the Statute of

Uses, was profound. But he was eminently prolix; this appeared even in his ordinary discourse and writtèn missives. His opinions were marked with this failing; and it is still more discoverable in the deeds and wills which he prepared. He was at the head of his profession during a quarter of a century, and then gave the law. His eminence made the first families resort to him. Thus his deeds were generally calculated for estates of the largest size. Mr. Booth was consulted by the old Duke of Cumberland, son of George II, whether he could recover a large legacy left him by his father's will. This will had been burnt by George III, just as the testator had burnt that of George I. Mr. Booth closed his opinion with this expression, "that a king of England has, by the common law, no power of bequeathing personal property."

We must not, in this place, omit SIR THOMAS PLUMER, who was the first vice-chancellor appointed under the act of 1813. All his urbanity was unable to overcome the dislike the great leaders of the bar had shown to the project of creating his court. His judgments were prolix to an insufferable degree, displaying great learning, and (what is even more rare) attention to the facts of the case he had to decide. Their diffusiveness detracted much from their effect. In reference to this, a well-known wit wrote the following epigram:

> "To cause delay in Lincoln's Inn,
> Two different methods tend;
> His Lordship's judgments ne'er begin,
> His Honor's never end."

With all their diffusiveness, his judgments were ex-

ceedingly forcible, though familiar in their style. In the well-known case of Cholmondeley *v.* Clinton (2 Mer. 362), he is said to have expressed himself after this wise, "Testator says to himself, I'll have the right heir of Samuel Rolle, and be *he* male, or be *he female*, he's the man for my money!"

He was unable to command the regular attendance of a bar. His usher, it has been said, might often be seen running about, even among the juniors, asking for employment—"Pray, sir, have you any thing to move? Can you bring on any thing before his honor?"

Lord Gifford was indebted for his success in life, solely to his own talents. An ex-chancellor said of him, that he rose, as a man does in a balloon—by an impulse not originating in himself. To his industry and application, however, may we with greater justice ascribe his fortune. Previous to his entering for the bar, he was placed in the office of a Mr. Jones, a solicitor at Exeter, with whom he served his articles. Mr. Baring, who was then member for Exeter, happened one day to call at Mr. Jones's office, to ask a question involving some legal difficulties; Mr. Jones, being somewhat perplexed, asked young Gifford's opinion, who was then in the room. He delivered it with so much clearness and quickness, that Mr. Baring remarked to a friend, after he left the office, that he had just left a young man, who, if he lived, would be lord chancellor of England. He practised for some time as a pleader under the bar, and was not called until 1808, and soon acquired a respectable practice. He was not eloquent, nor did he display any signs of possessing a refined taste. He is said to have been ignorant of Latin; it is at all events certain, that he never received a classical education. He was, how-

ever, a sound lawyer. "In a masterly argument," says Dr. Dibdin, "before the judges, with the late lamented Mr. Horner, upon the law of marine insurance, and in a subsequent one with Mr. Preston, upon a purely landed-property question, wherein he had the better of his distinguished antagonists, he not only surprised the bench, but astonished his friends." It was the high opinion that Lord Ellenborough had formed of his talents, which induced Lord Liverpool to make him solicitor-general. While filling this office, he had frequently to encounter Sir Samuel Romilly in the House of Commons. "The night before he was to meet him upon a very important debate, he told me," says Dr. Dibdin "he had not slept one wink. Mr. Canning sat close to him when he rose, and cheered him as he went on; but, at first, he was scarcely conscious of being upon his legs, and did not know whether the speaker was in the chair, or his opponent in the house, though he sat immediately opposite to him; but he soon shook up his intellectual energies, became warm, fluent, courageous, and convincing." His address to the House of Lords on what is popularly called the "Queen's trial," was distinguished by its moderation: his reply was exceedingly admired for its force and power. He was made, in 1824, Chief Justice of the Common Pleas, raised to the peerage, and appointed deputy Speaker of the House of Lords. In this latter capacity, he displayed a considerable knowledge of Scotch law. He was soon removed to the presidency of the Rolls' Court. His early death alone prevented his acquiring the honors of the woolsack.

Very far his superior was his predecessor, Sir William Grant, one of the most accomplished lawyers that ever presided in an equity court. Early in life,

and before he was called to the bar, this distinguished man went to Canada, where he practised as an advocate. When not twenty-five years of age, he was appointed attorney-general of that province; and, when Quebec was besieged by General Montgomery, commanded a body of volunteers. Feeling, however, that the colonial bar did not afford a field sufficient for his talents, he resigned his appointment and came to England, where he, for some time, frequented the courts without a brief. On one occasion, however, being retained in an appeal from the Court of Session in Scotland to the House of Lords, he displayed such abilities, that Lord Thurlow, then Chancellor, observed to a friend near him, "Be not surprised if that young man should one day occupy this seat." So much notice did the chancellor take of him after this time, that Grant devoted himself solely to practice in the equity courts, and soon obtained a tolerable share of business. Through Lord Thurlow's agency, he acquired a seat in parliament, where he distinguished himself as an able and eloquent speaker.

Few lawyers have made the impression on the house that Grant was in the habit of doing. No one was found more difficult to answer. "Once," says Lord Brougham, "Mr. Fox, when he was hearing him, with a view to making that attempt was wrinkled in a way unwonted to his sweet temper by the conversation of some near him, even to the show of some crossness; and (after an exclamation) he sharply said, 'Do you think it so very pleasant a thing to have to answer a speech like THAT?'" After filling various other offices, Sir W. Grant succeeded Lord Alvanley, as Master of the Rolls. He is said to have had frequent opportunities of being raised to the wool-

sack. Those who are anxious to read how admirably he discharged his judicial duties, may consult with advantage Lord Brougham's account of him in the first series of his Sketches.

Between Sir John Leach and Sir William Grant there was a marked contrast, although both of them obtained and deserved the reputation of being able *lawyers*. But to constitute an efficient judge, qualities are needed which are not necessarily involved in the idea of a good *lawyer*. Urbanity, patience, and impartiality, are all qualities, without which a man may readily become eminent for his legal knowledge, but without which he is wholly unfit for the bench or the woolsack. Sir John Leach had many disadvantages to encounter, to which we need not particularly allude. He was born in a respectable but not in a high station. He was the son of a tradesmen at Bedford. He was afterwards for some time in a merchant's counting-house, and, after leaving this situation, he went into the office of Sir Robert Taylor the eminent architect. He ultimately went to the bar, and was a pupil of Sir William Alexander, afterwards Chief Baron of the Exchequer. His first practice was at the Surrey sessions, and on the home circuit, which he afterwards forsook for the equity courts and the cockpit. He was successively Vice-Chancellor and Master of the Rolls. To this latter office he was appointed by Mr. Canning, who had previously, as it has been said, offered it to Mr. now Lord Brougham.*

* The premier is said also to have offered the place of Chief Baron of the Exchequer to Brougham, who refused it on the ground that it would prevent his sitting in parliament. "True," was the reply, "but you will then be only *one stage* from the woolsack." "Yes," returned Brougham, "*but the horses will then be off.*"

Sir John Leach was not only a clever lawyer, but also a fine gentleman. He was by no means unknown in the West End, and was always esteemed a desirable acquisition at the card-tables of venerable dowagers. He was (if the phrase be allowed) always *courtly* in court, and, although, very fond of saying sharp and bitter things, always did so in accents the most suave and bland. No submission could meliorate his temper, no opposition asperate his voice. He was very fond of pronouncing judgment, without assigning a single reason. He would pronounce the fatal decree in a tone of solemnity, betraying, however, the opinion he entertained of the application. In his days, as is well known, the Rolls Court sat only in the evening. The appearance the court then presented to a stranger seeing it for the first time, must have been very absurd; for when his honor had taken his seat, two large fan shades were placed in such a position, as not only excluded the light from the Master's eyes but rendered him invisible to the court. After the counsel who was addressing the court had finished and resumed his seat, there would be an awful pause for a minute or two. When, at length, out of the darkness which surrounded the chair of justice, would come a voice, distinct, awful, solemn, but with the solemnity of suppressed anger, "the bill is dismissed with costs." No explanations—no long series of arguments advanced to support this conclusion—the decision is given with the air of a man who *knows* he is right, and that only folly or villainy could doubt the propriety of his judgment.

When Lord Lyndhurst came into office in 1827, he wished to obtain Sir John Leach's consent to a reform in the Chancery Court (since effected,) by which the

Rolls Court should be made a morning court, and the Master should hear motions, &c., like the Lord and Vice Chancellor. Well knowing Leach's temper, Lord Lyndhurst was careful in selecting a person to notify to the Master his wishes. He fixed upon one on whose discretion he thought he could rely, and despatched him. The envoy charged with this delicate mission, obtained an interview with Sir John, and commenced with a long flourish on the Chancellor's wish to diminish the arrears of business which had accumulated in Chancery, dwelt on the duty of public men to make sacrifices for the public advantage, and ran over every topic which he could think of, to prepare the Master for the coming request. Sir John, he was delighted to see, heard him with great attention, bowed, smiled, said, "Certainly," "To be sure," "Without doubt," just in the right places. The messenger thinking that the rumors he had heard of Sir John's temper, were altogether unfounded, then "popped the question." In a tone of emphatic politeness, betraying neither surprise, nor anger, nor any thing but decision, the Master replied, bowing, "Sir, I will *not*. I wish you a *good* morning."

Sir John Leach, though by no means deficient as a lawyer, had a reckless, slashing way of getting through business, which often wrought great injustice. In this respect the Chancery Court, presided over by Lord Eldon, formed a strange contrast with the Rolls Court under the direction of Leach. The first, the lawyers used to call the court of *Oyer sans terminer*, and the latter the court of *Terminer sans oyer*. This expedition drew praises from some people; or is the following epigram only "satire in disguise?"—

"A judge sat on the judgment seat;
A goodly judge was he;
He said unto the Registrar,
'Now call a cause to me.'
'There is no cause,' said Registrar,
And laughed aloud with glee,
'A cunning *Leach* hath despatch'd them all;
'I can call no cause to thee!'"

## CHAPTER IV.

### LITERARY LAWYERS.

Connection of Law and Poetry—Kentish Customs—Forest Verses—Coke in Verse—Poetical Case in Burrowes—Sir Thomas More—Lord Bacon—Sir M. Hale—Selden—Lord Chancellor Somers—Lord Mansfield—Lord Chancellor King—Prynne—Cowper—Mr. Hargrave—Mr. Butler—Sir William Jones—Mr. Moile and the State Trials—Lord Eldon and Chevy Chase—Lord Tenterden—Sir Edward Sugden's New Version of "Wake, Dearest, Wake"—Lord Lyndhurst at the age of fourteen—Lord Denman's Translations—The modern way to get on at the Bar.

The connection between poetry and law is very ancient. The old British laws were written in verse—in the Cymric triads we have preserved the jurisprudence of the Welsh people, and the wisdom of the Frisian legislation is handed down to us in the same form. Amongst "Les Usages de Kent," those privileges which the Conqueror conceded to the prowess and independent spirit of the Kentish people, we find the following distich—

"The fader to the boughe,
And the son to the ploughe:"

by which we are to understand that the commission of an act of felony, punishable with death, did not involve the forfeiture of the criminal's land, and the consequent injury of the heir.

"Nighon sithe yeld,
And nighon sithe geld,
And vif pund for the were,
Ere he became healdere."

This was the law by which a tenant, whose land had been seized through his having neither paid the rent, nor performed the services in consideration of which he held it, was enabled to recover possession by paying five pounds as a were or amerciament. "The Forest verse," says Sir Francis Palgrave—

"Dog draw,
Stable stand,
Back berend,
And bloody hand—"

"justified the verdurer in his summary execution of the offender. And in King Athelstane's grant to the good men of Beverley, and inscribed beneath his effigy in the minster—

"Als free,
Mak I the
As heart may think,
Or eigh may see."

we have, perhaps, the ancient form of enfranchisement, or manumission."

Coming down to a comparatively modern period, Sir Edward Coke's reports have been, by some laborious poetaster, paraphrased in verse. This has been rather ingeniously done, as each case is comprised in a single distich, the initial word being the name of the case. Thus "Flower's case" is thus termed—

"FLOWER. On indictment, false evidence,
Is ever within the statute an offence."

Sharp's case—

"SHARP. A demise for life is but at will,
If liv'ry or words equivalent want still."

Again—

"ROSSE. Lease for life to one and assignee,
And of two more, good lease for life of three."

As late as Burrowes' Reports, do we find legal "truths severe," dressed in the "fairy" garb of verse. The case is that of the parish of Shadwell, versus the parish of St. John's, Wapping—

"A woman having a settlement
Married a man with none;
The question was—he being dead,
If that she had was gone.

Quoth Sir John Pratt, her settlement
Suspended did remain,
Living the husband—but him dead,
It doth revive again."

CHORUS OF PUISNE JUDGES.

"Living the husband—but him dead,
It doth revive again."

The State Trials have lately—thanks to the muse of Mr. Moile—made their appearance in poetry, and we do not now despair of seeing Lord Hardwicke's jocular design executed in earnest, viz., the publication of Coke upon Littleton in a poetical shape. The

Italians have a proverb, "Qui non amat musas, ille non amat Deus." Of the lawyer, indifference to literary pursuits cannot be predicated. Parnassus has recruited as much in Westminster hall as elsewhere, and we doubt if any have been elsewhere found more deserving of enlistment in such service.

Amongst our early literary lawyers was the great Sir Thomas More. We believe that the following effusion of his muse, whilst he was a prisoner in the Tower, will be read with interest. We should also add, that being deprived of ink, it was written with a coal.

"Eye-flatteringe fortune, look thou never so fayre,
Or never so pleasantly begin to smile,
As though thou wouldst my ruine all repayre,
During my life thou shalt not me beguile;
Trust shall I God, to enter in a while
Thy haven of heav'n, sure and uniforme:
Ever after thy calme, looke I for a storm."

Aubrey tells us that "Lord Bacon was a good poet, but concealed, as appears by his letters." Some specimen of the great philosopher and chancellor's poetry may be expected here. The following extracts will enable us to judge how far Aubrey estimated aright the poetical merits of this great man.

PSALM XC.

"O Lord! thou art our home to whom we fly,
And so hast always been from age to age;
Before the hills did intercept the eye,
Or that the frame was up of earthly stage:
One God thou wert, and art, and still shall be,
The line of time it doth not measure Thee.

Teach us, O Lord, to number well our days,
Thereby our hearts to wisdom to apply;
For that which guides man best in all his waies,
Is meditation of mortality.
This bubble light, this vapor of our breath,
Teach us to consecrate to hours of death."

The following have been preserved as "Verses made by Mr. Francis Bacon:"—

"The man of life upright, whose guiltless heart is free
From all dishonest deeds, and thoughts of vanitie;
The man whose silent daies in harmeles joys are spent,
Whome hopes cannot delude, nor fortune discontent;
That man needs neither towers nor arms for his defence,
Nor secret vaults to fly from thunder's violence:
He onlie can behold with unfrighted eyes,
The horrors of the deepe and terrors of the skies.
Thus scorning all the care that fate or fortune brings,
He makes the heaven his books, his wisdome heavenlie things,
Good thoughts his only friends, his life a well-spent age,
The earth his sober inne, a quiet pilgrimage."

Sir Matthew Hale, of whose virtues as a man, and efficiency as a judge, we have spoken elsewhere, is fully entitled to a place amongst our literary lawyers. In 1673, he published "An Essay touching the Gravitation and Nongravitation of Fluid Bodies, and the reasons thereof," which was followed in next year by "Difficiles Nugæ; or, Observations touching the Torricellean Experiment, and various solutions of the same, especially touching the weight and elasticity of the air." These works were attacked by the celebrated Dr. Henry More, and defended by the author. His most important production was a "Treatise on the Primitive Origination of Mankind," "which showed," says Dr. Birch, "a great force of

reasoning, and an equal compass of knowledge." This elaborate work was composed during leisure hours, whilst the author was on the circuit. So carefully was it written, that a gentleman who had seen the original MS. told Bishop Burnet he did not believe there were above twenty words altered in the whole work. His method of study was admirably calculated to secure the purposes of investigation. He would first determine on a plan, and then sketch it on a piece of paper. To this plan he would resolutely adhere. When he had arranged it and written it down, he would, to use his own phrase, "Tap his thoughts and let them run." He was a quick thinker, and would often write two sheets at a time, seldom less than between one and two, and he has been known to continue writing for hours together. When he had printed his great treatise, he sent a copy to Bishop Wilkins without mentioning that it was his own composition, but merely observing that the author was not a clergyman. The bishop and his friend Dr. Tillotson read a great part of the work without suspecting the writer, puzzled indeed that one possessed of such vast learning should be unknown to them. Dr. Tillotson at last guessed that the author was the chief-justice. The bishop then waited on his lordship, and thanked him for the entertainment his work had afforded him. The chief-justice blushed, and appeared displeased, suspecting that his messenger had betrayed him. The bishop immediately assured him that it was the varied learning manifested in the work that had betrayed the authorship. "No one but you," he added, "could have written it." The bishop then advised him to reduce the bulk of the work, prolixity being a vice which

pervaded Hale's literary productions, and begged, if business would not permit him to publish the whole, that at least a portion might be given to the public. It was the first part only that was published. It is, perhaps, by his "Contemplations Moral and Divine," that Sir M. Hale is chiefly known as an author to the public. This work was published without the author's consent by Mr. Stephens. It was never intended for, but well worthy of, general perusal. So vast were his acquirements, so diversified his knowledge, that we may, with Lord Chancellor Nottingham, apply to him the observation which St. Augustine made of St. Jerome's knowledge in divinity:—"Quod Hieronimus nescivit, nullus mortalium unquam scivit."* It should also be observed that Hale was not only a divine, a lawyer, and a philosopher, but also a poet. His poetical effusions, however, scarcely merit a place here.

John Selden deserves an eminent place amongst our literary lawyers. His inclination appeared to have been directed towards antiquarian literature, as his earliest friends were Camden, Sir Henry Spelman, and Sir Robert Cotton. The muses appear also to have been far from neglected by him; and he cultivated an intimate acquaintance with some of the most eminent poets of his time. With Michael Drayton, he was especially intimate, at whose request he wrote several learned notes to the first eighteen songs of the "Polyolbion." Selden could also boast, amongst his familiars, "rare Ben Jonson," whose love of learning, and fondness for antiquity, he could fully appreciate. In Sir John Suckling's ballad of "The Sessions of the

* What Jerome knew not, that knew no man.

Poets," the subject of which is the choice of a laureate under the presidency of Apollo, the enumeration of the poets begins with Selden, to whom a very honorable place is assigned.

> "There was Selden and he sat close by the chair."

The following is, perhaps, his most pleasing composition:—

> "So much a stranger my severer muse
> Is not to love-strains, or a shepherd's reed,
> But that she knowes some rites of Phœbus' dues,
> Of Pan, of Pallas, and her sister's meed.
> Read and commend she durst these tun'd essaies
> Of him that loves her (she hath ever found
> Her studies as one circle.) Next she prayes,
> His readers be with rose and myrtles crowned!
> No willow touch them! As his bayes are feee
> From wrong of bolts, so may their chaplets bee."

As a legal antiquary and as a biblical critic, Selden deserves honorable mention. His "History of Tythes," was perhaps, his ablest performance. In this work, which excited considerable interest on its appearance, Selden attacks, with great learning and ingenuity, the doctrine so zealously inculcated by many of the high-church clergy of that time, that tithes were of divine origin; and due, in virtue of a divine right inherited by the Christian from the Jewish priesthood, and by them derived from the patriarchal ages. In consequence of this work, Selden was summoned before the High Commission Court, and had to sign an apologetical acknowledgment of his error in holding and publishing doctrines so unjust and pernicious. In his history, Selden asserted the legal

right of the clergy to tithes, and defended the expediency of this method of remunerating the national clergy. It would seem that when tithes were abolished by the long parliament, the clergy were anxious to give every currency to Selden's opinions, which they had previously so loudly denounced. Selden's political career was that of a rational friend of rational freedom. In the motto which he assumed to himself; Περι Παντος την ελευθεριαν—liberty concerning all things—the key to his opinions, political and moral, may be found. He was a friend to free discussion, believing that nothing suffered from it but ignorance and error. He was, according to Sir Matthew Hale, "a resolved serious Christian, and a great adversary to Hobbes' errors." He appears, however, to have been a man of quick and impatient temper, as the following circumstance will show. It was his original intention to have left his library and manuscripts to the University of Oxford; but having, on one occasion, applied for some books out of the Bodleian library, and a large sum of money being, according to the statutes, required of him as a deposit or pledge, he angrily revoked his bequest, and left the whole, with the exception of a few works given to the College of Physicians, to his executors, with a direction that they should either divide them amongst themselves, or place them somewhere for the public use, or dispose of them in any way, rather than bring them to a public sale. They regarding themselves as "the executors, not of his anger, but his will," performed his original intention, and, after Selden's death, his literary treasures were deposited in the Library at Oxford. He was extremely impatient of interruption when engaged in study. Colomiés tells us, that very often, when Isaac Vossius

was ascending the stairs to pay Seldon a visit, the scholar, occupied in literary research, would call out from the top that he was not at leisure for ordinary conversation. Our legal friends can probably however sympathise with Selden in this particular.

Lord Chancellor Somers is supposed to have, together with his friend the Earl of Shrewsbury, composed that incomparable satire, "the Tale of a Tub." Somers' uncle is said to have furnished the original of 'Martin, the Church-of-England man; while his grandfather was Jack the Calvinist; and Father Petre, Lord Shrewsbury's tutor, was Peter, the Papist. The fact, however, that he contributed to the composition of this work, is very doubtful. In addition to some very able political tracts, Somers, in 1681—previous to his call to the bar—published some translations from Ovid, which are by no means destitute of poetical merit. When he became known to the world as the patriotic lawyer, and his future eminence was foreseen, he did not suffer either politics or his profession, to estrange him from the pursuits of literature. "He was," says Lord Orrery, "the general patron of the *literati.*" He proved his regard to letters by assisting in the publication of Tonson's magnificent folio edition of the Paradise Lost. Hume, no friend to the whigs, acknowledges that it was through the exertions of Mr. Somers, that this poem was "first brought into request." Pope has acknowledged that his early efforts met with the encouragement and elicited the applause of this eminent man.

"The courtly Talbot, *Somers*, Sheffield, read,
Ev'n mitr'd Rochester would nod his head."

To the new translation of Plutarch's Lives, under-

taken at this time by what was called "a mob of gentlemen, many of them bred at Cambridge," Somers contribnted a translation of the Life of Alcibiades; and he is also supposed to have displayed his knowledge of the French language, by translating the preface of Tourreil prefixed to his translation of Demosthenes. The well-kown poem called "Dryden's Satire to his Muse," which was published in 1683, was very generally ascribed to the pen of Somers, although Pope, on what authority does not appear, asserted that he did not write it It is a reply to Dryden's admirable "Absalom and Achitopel," but is far inferior to that exquisite production. Addison, a brother poet and brother whig, in dedicating to Somers his "Campaign," alluded to his "immortal strains." But the age of dedications has passed, and we know what value to assign to such an eulogy from a client to his patron.

The following absurd anecdote has been related respecting Somers. In early life he wrote some verses which got abroad without the author's name's becoming known. Another person, a modern Bathylus, declared that he had written them. This person being introduced to Somers, after he was chancellor, he asked him if he had written a certain paper of verses. "Yes, my Lord," was the reply, "'tis a trifle, I did it off-hand." On which the chancellor laughed so heartily, that the would-be poet, suspecting himself discovered, withdrew in confusion.

Lord Mansfield was also a poet. He gained the Bachelor's prize at Oxford, for the best copy of Latin verses on the death of George the First. Amongst the competitors over whom he triumphed, was Mr. Pitt, afterwards Earl of Chatham, and with whom he

was afterwards engaged in a series of contests of a more distinguished character. Pope has lamented

"How sweet an Ovid was in Murray lost!"

But we can afford to lose an Ovid when we gain a Cicero!

Lord Chancellor King, too, was a devotee of the muses. He is said to have written the following epitaph:—

"To the memory of Spong, a carpenter, in the church-yard of Ockham, Surrey.

"Who many a sturdy oak hath laid along,
Fell'd by death's surer hatchet, here lies Spong.
*Posts* oft he made, yet ne'er a place could get,
And liv'd by *railing*, though he was no wit.
Old *saws* he had, although no antiquarian,
And *styles* corrected, yet was no grammarian.
Long liv'd he, Ockham's premier architect,
And lasting as his fame a tomb t' erect,
In vain we seek an artist such as he,
Whose *pales* and *gates* were for eternity!
So here he rests from all life's toils and follies.
O spare a while, kind heaven, his fellow-laborer Holles.*

Prynne, that most pragmatical of all our literary lawyers, was the most remarkable for his industry. Wood, supposes that he wrote at least a sheet every day, computing from the time that he arrived at man's estate. He gave a complete copy of his works to the library of Lincoln's Inn, of which society he was a member. On hearing this, he, Noy promised the society that he would present them with the works of John Taylor, the water poet, by way of accompani-

* A bricklayer employed in Lord King's family.

ment. "His custom was," says Wood, "when he studied to put on a long quilted cap, which came an inch over his eyes, serving as an umbrella to defend them from too much light; and, seldom eating a dinner, would every three hours or more be maunching a roll of bread; and now and then refresh his exhausted spirits with ale." It is to this latter source of inspiration that Butler alludes in his incomparable address to his muse:—

"Thou that with ale or viler liquors,
Did'st inspire Withers, *Prynne*, or Vicars;
And teach them, though it were in spight
Of nature, and their stars to write."

He would also fain be thought a law reformer.

"Mr. Prynne," says Pepys in his Dairy, "did discourse with me about the laws of England, telling me the main faults in them, amongst others, obscurity, through long statutes, which he is about to abstract out of, all of a sort, and as he lives and Parliaments come, get them put into laws, and other statutes repealed, and then it will be short work to know the law."

Amongst our poetical lawyers, Cowper—the amiable, gentle-hearted Cowper—claims a place. From the age of twenty to twenty-three, he says, "I was occupied, or ought to have been occupied, in the study of the law. At the age of eighteen, being tolerably well furnished with grammatical knowledge, I was taken from Westminster, and, having spent about nine months at home, was sent to acquire the practice of an attorney." Here he became first acquainted with Thurlow, afterwards chancellor. To the period of his clerkship he thus alludes in a letter to Lady Hesketh—"I did actually live three years with Mr.

Chapman, a solicitor; that is to say, I slept three years in his house; but I lived, that is to say, I spent my days, in Southampton Row, as you well remember. There was I and the future Lord Chancellor constantly employed, from morning to night, in giggling and making giggle, instead of studying the law. O fie, cousin! how could you do so?" After leaving Mr. Chapman's, which he did when he became of age, he took chambers in the temple; here, however, he was in no ways more profitably occupied. "Three years," as he observes in a letter to Mr. Unwin, "mis-spent at an attorney's office were, almost of course, followed by several more, equally mis-spent, in the Temple."

He took no pains to qualify himself for practice in his profession, trusting to his trifling patrimony, or to the zeal of his friends for obtaining the means of future subsistence. One evening, during the period of his residence at Mr. Chapman's, Cowper was drinking tea, together with Thurlow, at the house of a lady in Bloomsbury. Addressing his fellow-giggler he said, "Thurlow, I am nobody and shall always be nobody, and you will be chancellor. You shall provide for me, when you are." Thurlow smiled, and replied, "I surely will." "These ladies," said Cowper, "are witnesses." The future chancellor still smiled and said, "Let it be so for I certainly will do it."* Short-

* Cowper considered himself slighted by Thurlow, when the latter arrived at the predicted dignity. But there is strong evidence to show that Thurlow was not aware that his friend was in indigent circumstances, until the very month that he went out of office for the last time, in fact until the period when he could do nothing for him. That Thurlow had not forgotten his ancient intimacy with the poet, is amply shown by some letters which have been only lately published. It seems that Cowper had become persuaded that he was wholly unacceptable to God:

ly after his removal to the Temple, Cowper's constitutional malady began to manifest itself. His law studies have often been supposed to have contributed to promote, if not to produce it; but this is in the highest degree improbable. Those studies were pursued in too desultory a manner to have had such a tendency; but, on the contrary, it is highly probable that had they been pursued more steadily and effectively, and had the unhappy poet, instead of "giggling and making giggle" for the three years he was with Mr. Chapman, devoted himself to the study of his profession, he would have so strengthened and disciplined his mind, as to have enabled it to resist the onslaught of the unhappy delusions to which it afterwards became the prey.

The well known Francis Hargrave was the son of a solicitor, originally in considerable practice, but whose imprudence and misfortunes rendered him ultimately dependent on his son. Hargrave was educated at the Charterhouse, and Oxford, and was called to the bar by the society of Lincoln's Inn, and commenced practice in 1764. He was brought into notice in the first instance, chiefly, by his argument in the celebrated case of the Negro Somerset. It

in order to combat this delusion, Hayley, his friend, who had become intimate with the ex-chancellor, applied to various persons, eminent for their station and piety, (the king, the bishops, the judges, &c.) to induce them, as though of their own accord, to address letters to Cowper, testifying to the service his works had performed to religion and morals. Letters have been found, addressed by Lord Thurlow to Lord Kenyon, earnestly entreating him to aid this plan; and sending him a form, prepared by himself, for the chief justice's signature. This evidences a friendly spirit on the part of Thurlow towards Cowper.

was through his exertions, that was obtained the clear and distinct enunciation of that glorious principle of our law, that the first moment a slave breathes English air he is a slave no longer. He received letters from both Lord Mansfield and Chief Baron Macdonald, complimenting him on the learning and ability which he displayed in this argument. After this, Mr. Hargrave's business began greatly and rapidly to improve, and, had other circumstances permitted, he would shortly have realised a large fortune. But in addition to his own family, Hargrave had, unfortunately, to support and educate his brother's family, consisting of one son and three daughters. This kept him poor, at a time when he might reasonably have expected to become rich. By Lord North, he was appointed Counsel to the Treasury, at a salary of £600; but was removed by Mr. Pitt, in a manner by no means gracious, and which provoked severe observations from Lord Thurlow. In allusion to Pitt, Mr. Hargrave observed that the minister had said that "the chief cause of my removal, was that skeleton of general ideas on the Regency Question; the pamphlet I published, under the title of 'Brief Deductions.' But as a subsidiary reason, he imputes to me such official dilatoriness as rendered me useless to him. Having called to his aid this imputation, he then proceeds to state that, unwilling to hurt my fortune, he permitted me to hold my situation as a sinecure; that by accepting this tenderness, I had contracted an obligation, at least not to be hostile to the administration; but, that my pamphlet on the regency was such a mark of opposition, as freely justified his resentment, and ought to have prevented my being surprised at it." Mr. Hargrave,

however, denied the imputed dilatoriness, and asserted his right, although connected with the government, to declare his sentiments respecting their conduct. "He seems," says a biographer, "always to have regarded himself a proscribed man."

We have already expressed our opinion of his style of composition, but we should be unjust were we to fail recording the feelings of admiration, which the perusal of his many learned and profound works has left on our minds. His annotations on Coke are well known, and his Juridical Exercitations and other tracts are equally celebrated. It is scarcely dispraise to add, that on many points of constitutional law he has, like most other law writers, depended too much on the *written* letter, and too little on the practice or customs of the constitution.

In the early part of 1813, Mr. Hargrave suffered considerably from his exertions, in editing Coke upon Littleton. Not only did he suffer considerable physical inconvenience, but he became subject also to mental aberrations, which, though neither frequent nor violent, were exceedingly distressing to his family. Several physicians were called in, amongst whom was Sir H. Halford, and they unanimously advised his immediate relinquishment of his professional pursuits. This, the influence of his friend, Mr. Whitbread, enabled him to do. Through the exertions of that gentleman, government were induced to purchase Mr. Hargrave's library and MSS. for the British Museum, where they are now deposited. The purchase money (£8000), enabled Mr. Hargrave to pass the remainder of his days in comfort. He died in 1823.

CHARLES BUTLER, who succeeded Mr. Hargrave in

the task of editing "Coke upon Littleton," was the son of a haberdasher in Pall Mall, whose shop was well known to the fashionable world by the sign of the Golden Ball. From his father he inherited a fortune of £30,000. He received his education, partly at a Roman Catholic academy at Hammersmith, and partly at Douay. In his twenty-fifth year he entered at Lincoln's Inn. His religion disqualifying him from being called to the bar, he practised as a certificated conveyancer, until the passing of the 31st Geo. III, when he was called. He is understood, however, never to have argued any case at the bar except the famous case of Cholmondely *v.* Clinton. Of the quality of his law writings, an able writer in the Law Magazine has thus spoken—"There are few writers to whom we are more indebted. He is the first who blended practical with theoretical knowledge; and nothing can be happier than his clear and simple manner of explaining an abstract doctrine." Of his annotations on Coke, the same writer observes, that in them there is nothing "from which a remarkable acquaintance with his subject, or a talent for combination and arrangement, or a power of pursuing principles into their remote and hidden consequences, can be inferred; and therefore, neither as a writer or a lawyer will they warrant us in giving Mr. Butler the highest rank." To his devotion to general literature we have already made allusion. He was an able controversialist and biblical scholar; well read in continental literature, and by no means ignorant of that of his own country. The diversity of his own learning may be guessed from the circumstance that the works which he left unfinished were, a "Life of Christ; or a Paraphrastical Harmony of the Gospels;"

and "a History of the Binomial Theorem." He was, in short, rather greatly than deeply learned. He was an able mathematician. Some of his happiest hours, he declared, were those which he devoted to mathematical studies. In his habits he was temperate. He was of a candid and amiable temper, and managed to conciliate the regard and affection of all with whom he came in contact. He devoted all his leisure time to study and composition, regularly rising at four in the morning. He was fond of music; often amusing himself with playing on the pianoforte, and occasionally would sing, if entreated by any friends present. His memory was most extraordinary: and he once excited the astonishment of his friends in this way in a strange manner. He was, in early life, employed by Lord Sandwich, (then first Lord of the Admiralty,) to compose a speech for him, in defence of Press Warrants, which his lordship delivered in the house. Butler was present, and, after he left the house, joined a party, where he was asked how Lord Sandwich had spoken. He replied that he had listened so attentively, that he thought he could repeat his whole speech, which he forthwith did, to the surprise of all his hearers.

Amongst his puplis, may be mentioned Lord Denman, Mr. Brodie, Mr. Duval, and Mr. Preston. At the instance of the former, a silk gown was given him in 1832. This is an honor rarely conferred on conveyancers. He died in the same year at the age of eighty-two.

Sir Willim Jones, the most distinguished of all literary lawyers, was educated at Harrow and Oxford; in both which places he discovered signs of those talents and that thirst for learning which afterwards

obtained for him so extensive and so enduring a reputation. At the University, he devoted himself with great zeal to the acquisition of the Oriental languages and to improving and enlarging his acquaintance with the classics, both of ancient and modern literature. It is also worthy of commemoration that he was extremely fond of, and well versed in, various athletic and elegant exercises. Of his *debut*, in the Court of King's Bench, Mr. Hawkins gives the following account: "The question before the court arose upon private disagreements in a family, which made a separation between a husband and wife necessary; and, there being a child, whose interests were to be taken care of, the interference of the court was required. A perfect silence prevailed; the attention of all present being attracted to hear what "Linguist Jones," as he was even then called, would say. Though he could not have been accustomed to hear his own voice in a court of law, for, I believe, this was his forensic *debut*, he nevertheless, spoke with the utmost distinctness, and clearness not at all disconcerted by the novelty of his situation. His tone was highly declamatory, accompanied, with what Pope has called "balancing his hands;" and he seemed to consider himself as much a public orator as Cicero or Hortensius could have done. His oration, for such it must be called, lasted for nearly an hour. But the orator, however he might wish to give a grand idea of the office of pleader, did not, in the course of his business, entirely avoid the ridiculous; for having occasion to mention a case decided by the court, he stated in the same high declamatory tone in which he had delivered the whole of his speech, that he found, "that it had been argued *by one Mr. Baldwin.*" Not being very conversant with

the state of the bar, he did not know that this one Mr. *Baldwin*, was, at the time of which I am speaking, a barrister in great business, and was then sitting not a half-yard from the orator's elbow. It occasioned a smile, or perhaps more than a smile, on every countenance in court; but the orator proceeded steadily as before. In the course of his speech he had occasion to mention the governess of the child; and he did it in such terms as conveyed, and must have conveyed to any one possessed of ordinary powers of comprehension, an idea that she was an extremely improper person to remain with a young lady: on the next day, therefore, Mr. Jones appeared again in the seat which he had occupied the preceding day, and, when the judges had taken their seats, he began in the same high declamatory tone, to inform the court, that 'it was with *the deepest regret* he had learned that in what he had the honor to state to their lordships the preceding day, he was understood to mention that Mrs. ——— was a harlot." The gravity of every countenance in court yielded to the attack thus made upon it, and a general laugh was provoked by it." The literary merits of Jones are too well known to require further comment.

We have resolved to abstain from any lengthened mention of such eminent persons in the profession as are yet amongst us; but we cannot close this chapter without observing that the race of literary lawyers is not yet extinct; and that there are many whose learning and eloquence reflect honor on the bench, or adorn the bar, who have displayed literary abilities of no mean order. Mr. Moile, who has published a poetical version of several of the state trials, observes in his preface, that the relation between law and

literature, and law and the fine arts, is far less remote than is usually supposed. "The action of replevin has already engaged the labors of both painters and dramatists: under the name of "The Rent day," it has drawn tears from thousands at our national theatres; and the pencil of a Wilkie has proved that a "Common Law, or Statutable Distress," may become of all others the most pathetic. But though, in both these works, the declaration and avowry are admirably delineated, there can be no doubt that the whole of the pleas in bar would be bad on a general demurrer. Succeeding artists may avoid the fault." Mr. Moile has been exceedingly successful himself in giving a poetical interest to the stern and usually forbidding realities of legal lore.

Lord Eldon is said to have perpetrated some half dozen poetical *nugæ*—one of which was a new version of "Chevy Chase," in the form of a chancery bill. We understand that this last specimen of "ingenious trifling," is yet extant. Lord Tenterden was renowned for his Latin versification.

Sir Edward Sugden is not a name that our readers would probably have expected to see here. But we have been told, on competet authority, that this eminent lawyer is the author of a humorous parody on the well known air, "Wake, Dearest, Wake." This parody is supposed to be a dialogue between a sheriff's officer and the unhappy object of his pursuit. The officer finding the door closed against him, advises the creditor, *as a friend*, to come out and surrender himself, for

"If you don't I shall nab you to-morrow:"

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"I don't care, I don't care, I don't care."

Lord Lyndhurst, too, has wooed the muse. The following anecdote may be relied on as authentic. While he was at a school kept by a Mr. Franks, a circumstance occurred which will serve to show how early the ardent temperament and ready talent, which has distinguished his public career, developed itself in this remarkable man. At Clapham, there was a young ladies' school, which was attended by the same dancing master as that employed by Mr. Franks; and, previous to his annual ball, the two schools used frequently to meet together for the purpose of practising. At one of these agreeable *réunions*, young Copley, then not more than fourteen years of age, was smitten with the charms of a beautiful girl, and, at their next meeting, slipt into her hand a letter containing a locket with his hair, and a copy of verses, of which the following is a transcript. They were entitled—

"VERSES ADDRESSED BY J. COPLEY TO THE MOST AMIABLE ————.

"Thy fatal shafts unerring move,
I bow before thine altar, love,
I feel thy soft, resistless flame,
Glide swift through all my vital frame;
For while I gaze my bosom glows,
My blood in tides impetuous flows,
Hope, fear, and joy, alternate roll,
And floods of transport whelm my soul;
My fault'ring tongue attempts in vain,
In soothing murmurs to complain;
My tongue some secret magic ties,
My murmurs sink in broken sighs;
Condemned to muse eternal care,
And ever drop the silent tear;
Unheard I mourn, unheard I sigh,
Unfriended live, unpity'd die.

"I beg you will do me the honor to accept of the trifle that accompanies it, and you will oblige

"Your affectionate admirer,
"J. S. COPLEY, Jun.

"P.S. Pray excuse the writing."

It is only necessary to add, that the lady to whom these verses were addressed still survives, and retains in her possession both the letter and its contents.

Lord Denman possesses poetical talents of no mean order, as the following translation from the Greek Anthology, published in Mr. Bland's collection, will show:

"In myrtle my sword will I wreathe,
Like our patriots, the noble and brave,
Who devoted the tyrant to death,
And to Athens equality gave!

"Loved Harmodius, thou never shalt die!
The poets exultingly tell,
That thine is the fulness of joy,
Where Achilles and Diomed dwell.

"In myrtle my sword will I wreathe,
Like our patriots, the noble and brave,
Who devoted Hipparchus to death,
And buried his pride in the grave.

"At the altar the tyrant they seized,
While Minerva he vainly implored,
And the goddess of wisdom was pleased
With the victim of liberty's sword.

"May your bliss be immortal on high,
Among men as your glory shall be,

Ye doom'd the usurper to die,
And bade our dear country be free!"

"In my profession," Sir W. Jones writes to Dr. Parr, "the reputation of a scholar is a dead weight on a person." Literary reputation is, certainly, not the best means for obtaining a practice. A poetical lawyer has described one more available:

THE MODERN WAY TO GET ON AT THE BAR.

"My Commons all eat, and my terms all past,
To the bar I'm now call'd, my dear father, at last;
To its profits I look, to its honors aspire,
The first of our name ever titled *esquire.*
That I'm proud of the title, I'm free to confess,
No longer plain *gentleman* now of the *press;*
By a penny-a-line I was scurvily paid,
I was starving—but think now my fortune is made!
I've struck out such a line as you'll say is by far
The best of all ways *to get on at the bar.*
Some try to get on as great black-letter readers,
But all now aspire to be thought *special pleaders.*
The title all claim, it belongs to but few,
Though first asked, when you're call'd, "Pray whose pupil were you?"
I said I was Tidd's, though you know that the fact is,
He taught me, 'tis true, by twice reading his practice.
Some to book-making take, but that's starving employment,
I never could read, or in books find enjoyment.
I laugh at translators, call editors ganders,
Who were paid, as was Williams, for editing Saunders;
Be praised, but left briefless, at last find how hard!
Poor Probity's meed is their only reward.
What were Vaillant's great gains by 's translation of Dyer?
He was made city pleader, but never got higher;
Had that place been a gift, some reward I'd have thought it,
But now with his own proper money he bought it.
But the way to get on I've struck out is much shorter,

I never draw pleadings, I read no reporter—
Those courses don't suit me—the way which I choose
To get on, is by paragraph puffs in the News.
For example, when call'd, there appeared in the Star,
Mr. Lignum, last Wednesday, was call'd to the bar.
And it then lets the world obligingly know,
The home circuit, we hear, Mr. L. means to go.
In the front of the paper this holds a first place,
And my name in large print stares you full in the face.
Then soon after, we hear, and we hope it is true,
Mr. Lignum, at Clerkenwell, made his debût;
At the Old Bailey, the public, as well as his friends,
With pleasure will hear he in future attends;
And the night of his call five retainers were sent,
In five parish appeals, for the sessions in Kent.
This, half news and half puff, I take care sha'nt be lost,
But appear in the Chronicle, Herald, and Post;
And in all other papers, all which you may guess,
I owe to my gentlemen friends of the press,
Those who crowd up the courts every day, taking notes,
With greasy black heads, and more greasy black coats.
These are all dear friends, and they gave me the hint,
Of th' advantage I'd find from appearing in print.
Your name seen so often, folks naturally say,
'Why Lignum's the most rising man of the day.
You'll find business bring business, and we shall not fail,
Though you move for a nonsuit or justify bail;
That your name shall appear, and you'll seem to have all,
Or, at least, half the business of Westminster Hall.'
Thus you see, my dear father, it answers my ends
To make all these black-headed gentry my friends;
And think, just as I've hit to a tittle,
The way to get on, and it costs me but little;
At chambers I now and then give them a lunch,
Or, at night, a regale of hog's puddings and punch."

# CHAPTER V.

## THE BENCH AND THE WOOLSACK.

**Independence of the Judges—the Bench in the days of Elizabeth—Croke—Judge Jenkins—Mr. Justice Alderson—Sir Alan Chambré—George III and the Judges—Dismissal of Judges—Judicial Corruption—Alfred—Judges in the days of Edward I—A Striking Punishment—Latimer's Account of the Judges—Edward VI and his Judges—Bacon's Corruptions—Charles II—Judge Yates—Respect for Judicial Dignity—painful Duties of a Judge—Sir Giles Rooke—Severe Labors of the Chancellor—the Chancellor's Patronage—Clerical Lawyers.—Ancient Court of Chancery—Lay Chancellors—Habits of the Old Judges—Anecdotes of a Judge—Chief Baron Thompson—Lord Eldon—Judicial Character—Judge and Jury—the Bench and the Bar—Politics and the Judges—James II and the Lawyers—Erskine and Holt—Appointment of Judges—Division of the Chancellorship—Judicial Studies—Dilatoriness of the Courts—Precedents—Jus dicere non jus facere—Honors of the Bench—Salaries of the Judges.**

"We read that in the case of Humphrey Stafford, that arch-traytor, Hussey, chief justice, besought king Henry VII that he would not desire to know their opinions before-hand for Humphrey Stafford, for they thought it should come before them in the King's Bench judicially, and then they would do that which of right they ought; and the king accepted of it."*

* 3 Inst. 39.

Yet it was a favorite boast of Henry that he governed his kingdom by his laws, and his laws by his lawyers;* and to a certain extent he carried his boast into performance.

Queen Elizabeth, having created a new office in the court of Common Pleas, conferred it upon Richard Cavendish, a gentleman of the privy chamber, and commanded the judges to admit him to the same. The judges, instead of promptly obeying this demand, alleged that the prothonotaries claimed a right to perform the duties of the office. The queen, exasperated at this, addressed to the judges a very angry letter, reprehending them for their contumacious neglect of her orders, and desiring them to acquaint the lord keeper and the earl of Leicester with the causes of their contempt of her authority. The judges immediately complied with this order, and repeated to the two lords the grounds of their refusal to admit Cavendish to the office. This did not satisfy the queen, who sent them a message commanding them on their allegiance to admit Cavendish forthwith; insisting, at the same time, that no injury could result therefrom to the prothonotaries, who could, if they felt themselves aggrieved, vindicate their rights by appeal to a court of law: and she concluded with observing, that she would not take away their rights, but only put them to their action. The judges, however, were not to be menaced or cajoled. They replied, firmly, "that the queen had taken her oath for the execution of justice according to law; that

* It is a remarkable circumstance, that in the council of regency during the minority of Henry VIII, there was not one lawyer: so obnoxious had the infamous practices of Empson and Dudley rendered the whole profession.

they did not doubt but that when her majesty was informed that it was against law, she would do what befitted her; for their parts they had taken an oath to God, to her, and to the commonwealth, and if they should do it without process of law before them, and upon her command put the others out of possession, though the right remained to them, it were a breach of their oaths, and, therefore, if the fear of God were not sufficient, they told her, that the punishment that was inflicted upon their predecessors for breach of their oaths (alluding to Thorpe's case), might be sufficient warning to them." The queen, imperious as she was, acknowledged the justice of their excuse, and so the matter ended.

In the famous case of ship-money, the judges were almost unanimous for the king. Mr. Justice Croke declared that he believed the law to be opposed to the claims of the crown. Finding, however, that the opinions of his brethren were against him, and conscious that his resistance, while it would fail in obtaining judgment for the defendant, would involve the loss of his own place, and the ruin of his family, he at last resolved to give way, and to concur with the other judges in deciding in favor of the crown. "A few days before he was to argue," says Whitelock, "upon discourse with some of his nearest relations, and most serious thoughts of this business," having intimated his intention of giving way, his wife, who was a very good and pious woman, told him, "that she hoped he would do nothing against his conscience, for fear of any danger or prejudice to her or his family; and that she would be contented to suffer want or any misery with him, rather than be an

occasion for him to do or say any thing against his judgment and conscience."

To his eternal honor and our great benefit, Croke, when the hour of danger arrived, decided as his conscience directed, and thus saved his memory from the obloquy in which his colleagues became justly involved.

David Jenkins a Welsh judge in the time of Charles I, when the rebellion first broke out, imprisoned and otherwise punished, as guilty of high treason, many persons who had taken up arms against the king. Having been captured by the parliamentary forces, he was brought up to London, and committed to the Tower. Whitelock mentions that when he was brought before the court of Chancery to answer to a bill that had been filed against him, he courageously told the court, "that he ought not, and would not, submit to the power of that court; for it was no court, and their seal was counterfeit." For this he was committed to Newgate, and was afterwards impeached for high treason by the House of Commons. On being brought before the house, the intrepid old judge refused to kneel at the bar, telling the house that "he denied their authority, and that they wronged the king, and that although they pretended to protect the law, there could be no law without a king," and "used," says Whitelock, "high expressions against the parliament and their authority." For his boldness, the house fined him £1000, and ordered him to be again committed to Newgate, whence he was transferred to Wallingford Castle. An act was afterwards passed for his trial in the high court of justice, and every effort was made to induce him to submission, and a recognition of the usurping powers. Seve-

ral members of the House of Commons waited on him for this purpose, but the sturdy Welshman was inflexible. At last he was told that, if he continued thus obdurate, he would be marched to execution. "So be it," he exultingly exclaimed; "but I shall suffer with Magna Charta under one arm, and the Bible under the other!" These are splendid instances of the haughty integrity and proud independence of English judges.

Dr. Parr has observed, that to say of a judge, that he was incorrupt, was hardly to eulogise him. To the purity with which justice is and has been administered, between man and man in this country, may be with justice ascribed the rapid progress towards a free and enlightened government, which is discernible throughout our history. The following anecdote is well known, but still worth recording in this place. Of Sir M. Hale, his biographer, Bishop Burnet says, "A gentleman sent him a buck for his table, that had a trial at the assizes; so, when he heard his name, he asked if he were not the same person that had sent him venison: and, finding he was the same, he told him he could not suffer the trial to go on till he had paid him for his buck. To which the gentleman answered, that he never sold his venison; that he had done nothing to him that he did not do to every judge that had gone that circuit, which was confirmed by several gentlemen then present; but all would not do, for the lord chief baron had learned from Solomon, that a gift perverteth the way of judgment, and therefore he would not suffer the trial to go on till he had paid for the present; upon which the gentleman withdrew the record. And at Salisbury, the dean and chapter, having, according to the

custom, presented him with six sugar-loaves in his circuit—he made his servants pay for the sugar before he would try their cause."

To Sir Matthew Hale's integrity and independence a very competent witness has borne very honorable testimony. "I remember," says Dryden, in his Essay on Satire, "a saying of King Charles II, on Sir Matthew Hale, who was doubtless an uncorrupt and upright man, that his servants were sure to be cast on a trial, which was heard before him; not that he thought the judge was possibly to be bribed, but that his integrity might be too scrupulous; and that the causes of the crown were always suspicious, when the privileges of subjects were concerned." The following anecdote told by Roger North, confirms this statement. "A courtier who had a cause to be tried before him, got one to go to him, as from the king, to speak for favor to his adversary, and so carried his point; for the chief justice could not think any person to be in the right, that came so unduly recommended."

At the assizes in Cardiganshire, in 1832, the defendant in an action sent a statement of his case, with a ten pound note enclosed, addressed to Mr. Justice Alderson, at his lodgings. When the learned judge next day took his seat on the bench, he mentioned what he had received the evening before, and declared his intention of placing the letter in the hands of the attorney-general for the purpose of a prosecution against the offender. It was, however, intimated to him that the offence had been the result rather of ignorance than of crime, and the judge, having returned the money and censured the defendant, agreed to allow the matter to drop.

So, until lately, we have understood, that it has been the custom, to avoid the suspicion of being actuated by any partiality, whenever a judge should be sitting in his native county* never to sit on the criminal side of the court. We should have thought, however, that opportunities for displaying his personal feelings would be more often afforded a judge when trying civil than criminal causes. It is scarcely probable he would have to play the part of a Brutus, and condemn his children to death. Mr. Justice Chambré, a learned and excellent judge, displayed on one occasion that jealousy of public opinion, which keeps the bench so pure. He tried a very important case at an assize town; the defendant to which was a gentleman of large property in the county, and whose house lay about half-way between the town where his cause was tried and the next circuit town. He was, therefore, in the habit of inviting the judges to spend the night in his house during their circuit, and the invitation, as a matter of course, was regularly accepted. After this trial, he sent the usual invitation, but Mr. Justice Chambré replied that he felt it would not be proper for him to accept it, under the circumstances of the case.

The independence of the judges, that is, their independence of royal influence, is guaranteed by the act Geo. III, c. 23, passed at the earnest request of the king himself, who said "that he looked upon the independence and uprightness of the judges as essen-

* It is understood that the Chief Justice of the King's Bench has the first choice of the circuits; the Chief Justice of the Common Pleas aad the Chief Baron of the Exchequer choose next; and afterwards the puisné judges and barons according to seniority.

tial to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honor of his crown." By this memorable measure, the commissions of the judges were enacted not to determine upon the demise of the crown, but to continue during good behavior—power being still reserved to the sovereign, to remove them upon the address of both Houses of Parliament. It was, however, considered by many very able lawyers, that even previous to this act, and by virtue of the act of settlement, the demise of the crown did not determine the commissions of the judges. In practice, however, it was invariably considered to do so. The importance of rendering the judges free from the influence of the crown, was recognised by the House of Lords, in 1640, when they petitioned Charles I, "that all Justices of the King's Bench and Common Pleas, and the Barons of the Exchequer, that go circuits, may hold their places by patent from his Majesty—*quamdiu se bene gesserint* and not *durante bene placito.*" To this request, the king yielded his assent.* We may presume from the fact, that Cromwell removed several of his judges who refused to violate their oaths, to serve his purposes, that the judges' commissions, during the Protectorate, were merely during will. After the restoration of Charles II, the judges were for sometime appointed *quamdiu se bene gesserint,* but after 1678 they were appointed only during pleasure. This change of system was adopted in consequence of Mr. Justiee Wyld's ("an ancient and worthy judge," as he is called by Burnet,) having told the Popish wit-

* Rushworth, iii, 1836.

ness Bedlow, "that he was a perjured man, and ought to come no more into courts, but go home and repent." For this the king dismissed him.

To such an extent did the corrupt court of those times carry their power, that, in 1679, four judges were removed from the Bench, while James II, during his reign of scarcely four year's duration, removed not less than ten. The first step towards securing the administration of justice from the caprice or the tyranny of the sovereign, was taken at the Revolution, when the judges' commissions were again granted *quam que se bene jesserint.* A bill was introduced, and passed both Houses of Parliament, in 1692, by which it was enacted that the judges should hold their places for life. This, however, William III would not submit to, and he used the prerogative, since so rarely exercised, of refusing his assent to the measure. By the act of settlement,* however, a great advance was made towards securing an impartial administration of the law. By this statute, it is declared, that judges should always be appointed during good behavior, and that their salaries should be ascertained. Dr. Johnson objected greatly to the act of Geo. III. He contended, that, if it were possible that a judge might be partial to the crown, judges might also, and had been, partial to the populace. "A judge," he said, "may become corrupt, and yet there may not be legal evidence against him. A judge may become froward from age. A judge may grow unfit for his office in many ways. It was desirable that there should be a possibility of being delivered by a new king."

* 12 Will, III, c. 2, passed A. D. 1709.

It would be a proud thing for the legal historian, if he were not compelled to register the misdeeds and the unblushing corruption of but too many judges, who have disgraced the judgment-seat.

The Scroggs' and the Jeffreys', who have been the subservient instruments of a court, or the Macclesfields, who have abused their high functions for merely selfish and personal ends, fill a black page in the annals of our country, and one we would fain turn over without notice: yet, black as is the page, it is not the less instructive—for if the virtuous be useful to us as examples, not less useful are the vicious to us as beacons. The history of judicial corruption begins early. In that remarkable work, the "Mirror of Justices," there is a chapter on "the abuses of the common law," in which it is said that "it is abuse that justices and other officers, who kill people by false judgments, be not destroyed as other murderers; which King Alfred caused to be done, who ordered forty-four justices in one year to be hanged, as murderers, for their false judgments." Amongst other cases, the following may be enumerated:

He hanged Cadwine, because he judged Hackery to death, without the consent of all the jurors; and whereas he stood upon the jury of twelve men, and because three would have saved him against the nine, Cadwine removed the three, and put others upon the jury, upon whom Hackery put not himself.

"He hanged Cole, because he judged Ive of death, when he was a madman.

"He hanged Athulf, because he caused Copping to be hanged before the age of six-and-twenty years.

"He hanged Athelstone, because he judged Herbert to death for an offence not mortal.

"He hanged Horne, because he hanged Simon at days forbidden.

"He hanged Therbone, because he judged Osgot for a fact, whereof he was acquitted before against the same plaintiff, which acquittance he tendered to own by oath, and because he would not own it by record, Therborne would not allow of the acquittal which he tendered him."

Judicial corruption attained a very considerable height in the reign of Edward I. Upon the return of this sovereign from France, in the seventeenth year of his reign, (for the purpose, if we may believe Sir William Blackstone, of filling his coffers which had been drained by long foreign wars) he determined upon bringing the judges to account for their misdeeds, and of redressing those evils in the administration of justice, against which his subjects so loudly and so incessantly clamored. The chief justice of the Common Pleas, Sir Thomas Wayland, was convicted of felony, as accessary in murder, and having abjured the country, he forfeited all his estates, the value of which, is said to have been a hundred thousand marks, or seventy thousand pounds. Sir Ralph Hengham was charged with having altered of a fine, from thirteen shillings and four pence, to six shillings and eightpence, an offence for which he was fined eight hundred marks. By way of a *striking* memento, it is said that the fine was employed in building a clock-tower close to Westminster Hall, so that the sound of the clock might be heard by the judges as they were sitting in ther courts. It has been observed, however that this could hardly have been done, as clocks did not come into general use until the latter end of the fourteenth century. Lord Holt

alluded to this anecdote in an anonymous case reported 6 Mod. 130. This was a case of ejectment in which the term was made for five years; and after a verdict for the plaintiff, he was delayed of judgment and execution, by injunction in Chancery, until the term surceased. Motion was then made to renew the term, and a case was quoted where it had been done, and it was alleged that it was the constant practice in the Exchequer to do so. The court said that they could not do it without altering the record; and Chief-Justice Holt said, in refusing the motion, that "he considered there wanted *a clock house over against the hall gate!*" Sir William Thorpe, the Chief Justice of the King's Bench, who, in consideration of ninety pounds, staid a writ of exigent, which was to have been awarded against certain persons, was sentenced to be *ad voluntatem regis*, at the mercy of the king, to be dealt with as it pleased him. (3 Inst. 145.) Adam de Stratton, the Chief Justice of the Exchequer, "a man," says Coke, "of great possessions and riches," was attainted of felony, and the rest of the judges were fined and imprisoned, "saving," says Coke, "Johannes de Mettingham, and Elias de Beckingham, who, to their eternal memory and honor, were found upright, and free from all bribery and corruption."

It would appear from Latimer's Sermons, that the judges, in his time, were not free from corruption. "Now-a-dayes the judges be afrayde to hear a poor man agaynst the rich, insomuch they will eyther pronounce against him, or so drive the poor man's sute, that he shall not be able to go thorow with it." "Cambises," he continues, "was a great emperor—such another as our maister is—he had many lord deputyes, lord presidentes, and lieutenantes, under

him. It is a great while sythe I read the historye. It chaunced he had under him, in one of his dominions, a briber, a gift-taker, a gratifier of rich men, he followed giftes just as he that followed the pudding, a handmaker in his office, to make his sonne a great man; as the olde saying is, happy is the childe whose father goeth to the devil. The cry of the poore widow came to the emperor's eare, and caused him to flay the judge quicke, and laid his skinne in his chayre of judgement—that all judges that should give judgement afterward should sit in the same skinne. Surely it was a goodly signe, a goodly monument, the signe of the judge's skinne. I pray God we may once see the signe of the judge's skinne in England. Ye will say peradventure that this is cruelly and uncharitably spoken. No! No! I doe it charitably for a love I beare to my country."

In King Edward VI's journal printed by Burnet, in the appendix to his History of the Reformation we find evidences of the judicial corruption practised in those days. Beamont, the Master of the Rolls, confessed that he had bought land with the king's money, and had lent some to other people, to the amount of £900 in money, and £16,000 in obligations. He also confessed that he purchased the interest of a defendant in a cause before him, and caused a deed to be forged to make her disputed title apparently good. In consideration of his offences, he agreed to surrender all his property into the hands of the king. In a collection of King Edward's papers, there is one entitled "A Discourse about the Reformation of my Abuses," in which he observes, that "the lawyers also, and judges, have much offended in corruption and bribery."

The corruptions practised by Empson and Dudley, in the time of Henry VII, are well known. Lord Bacon, in his history of the reign of that monarch, has explained very fully the means by which these rapacious judges managed to enrich themselves, and to fill at the same time the coffers of their king and master; "preying" as he says, "like tame hawks for their master, and like wild hawks for themselves." They would cause indictments to be laid against certain persons, whose chief crime was the possession of wealth; and having, through the agency of juries, who were their creatures, managed that true bills should be found, would forthwith imprison their victims, and usually succeeded in extorting from them, by various devices and under several pretences, large sums of money, by way of what they termed "compensations and mitigations," before they would suffer them to be liberated from confinement. Emboldened by the success of these practices, they went further, and dropping the mask of legality, which they had previously assumed in their proceedings, they would attach any one they chose, and have him brought before them, and such persons as they had selected, who, sitting in a private house in some obscure place, and styling themselves "a court of commission," would, acting as judge and jury, try and condemn. Both Empson and Dudley are said to have been well read lawyers, and they made a dexterous use of their learning, for they raked up many old statutes, long considered obsolete, and in practice disregarded, and enforced them without respect to the object for which they had been framed, or the time they had been allowed to slumber in obscurity. By acting as agents in the purchase of royal pardons, they made

the blessed prerogative of mercy, a profitable source of revenue to the sovereign. "I do remember," says Lord Bacon, "to have seen not long since a book of Empson's, that had the king's hand to almost every leaf, by way of signing, and was postilled in the margin with the king's hand likewise, where was this remembrance: 'Item, received of such a one five marks for a pardon to be procured; and if the pardon do not pass, the money to be repaid, except the party be some other way satisfied!' And over against this memorandum (of the king's own hand) 'otherwise satisfied.'" We need not wonder at the vast accumulation of wealth which this sovereign managed to acquire. In reference to the bribes which he shared with his judges, Bacon observes, "These little sands and grains of gold and silver (as it seemeth) helped not a little to make up the great heap and bank."

That period of our history in which the Stuart dynasty had rule, abounds with instances of judicial corruption. We find that Bacon lent a ready ear to the solicitations in behalf of suitors, advanced by his patron the Duke of Buckingham, to whom he was, in a great measure, indebted for his place. "I am very glad," writes the favorite to the chancellor, "to understand that there is so good hope of Sir Gilbert Houghton's business, *which I must needs ascribe to your lordship's great favor towards him for my sake*, which I will ever acknowledge." On the very day that he was made Lord Keeper, Bacon wrote Buckingham a letter, in which he declared, that he cannot do otherwise than profess, "that in this day's work, you are the truest and perfectest mirror and example of firm and generous friendship that ever was in court. And," he continues, "I shall count every

day lost, wherein I shall not either study your well-doing in thought, or do your name honor in speech, or *perform you service in deed.*" Bacon himself was probably not more corrupt than his predecessors, but, earnestly, as in his writings and in his exhortations to the judges, he denounces the sinfulness of accepting bribes; he was, by his own confession, guilty of having bartered justice. From the parties in one cause before him he confessed to have received "a dozen of buttons, to the value of fifty pounds after the cause was ended." From others he was charged with having received about a fortnight after his decree "a suit of hangings worth one hundred and threescore pounds and better." He acknowledged the receipt, but said that "it was towards the furnishing of his house!" To a variety of other charges of a like nature he pleaded guilty.

The influence which Charles I exercised upon the judges is too well known for us to dwell upon it here; and, if we may believe Bishop Burnet, his son, Charles II, exercised an influence not less pernicious. He was in the habit of frequenting the House of Lords, and by personally canvassing the peers, often obstructed the course of justice. "He became," says the bishop, "a solicitor not only in public affairs, but even in private matters of justice. He could in a very little time have gone round the house and spoke to every man that he thought worth speaking to. And he was apt to do that upon the solicitation of any of the ladies in favor, or of any one that had credit with them. He knew well on whom he could prevail."

It would scarcely be desirable to add to these instances of judicial corruption. Happily such are un-

known in these times. The judges of England stand free from even suspicion, and we may, without hyperbole, say with Dr. Parr, that bribery is as little known to our bench as parricide is said to have been to the ancient Greeks. The purity which characterises the administration of justice in modern times is due to many fortunate and concurring circumstances. But from whatever it arises, its existence, nothing but ignorance or malignity could doubt, and the advantages of which it is the source, even folly or faction could not question.

It has, however, been whispered, that, at a late period, efforts have been made to tamper with the integrity of the judges. Mr. Justice Yates, it has been said, was one whose virtue was thus assailed. But he turned a deaf ear to all the solicitations of the minister, and rejected his overtures with scorn and contempt. Surprised at his firmness, we are told, his tempter procured a letter from the sovereign to be sent to this obdurate judge; who, when he received it, suspecting something wrong, returned it unopened. In 1767, ministerial influence was exercised very liberally amongst the judges. It is said, the means adopted was giving them lottery tickets, and Mr. Justice Aston was actually seen to dispose of one of his in 'Change Alley. When upbraided with such conduct, he coolly replied, "I think, sir, I have as good a right to sell my tickets, as my brother Willes." Perhaps, however, scandal has been too busy with the characters of these learned judges. But supposing the charges shall be true, and that these should have been guilty, we may, with fairness, ask, "What are these among so many?"

The judges in the courts of law and equity, are

esteemed, by the constitution, of very great dignity and importance. Striking in a superior court of law, or at the assizes, is more penal than striking in the king's palace; an offence which our law used anciently to visit with the utmost severity. Previous to the conquest, we learn from Blackstone, to strike any one in the king's court of justice, or even to draw a sword therein, was a capital felony: but our law exchanged the loss of life for that of limb; now such an offence may be punished with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels and of the profits of lands for life. Those even who are guilty of having used threatening or reproachful words to a judge sitting in a court, are guilty of a high misprison, and have been punished with large fines, imprisonment, and corporeal punishment. Even an affray or riot near the courts, though out of their actual view, is punished with fine and imprisonment. So highly does the law respect the dignity and consequence of the judicial character. Bacon, when Lord Keeper pronounced a decree against Lord Clifton, who was so enraged at it, that he publicly declared that "he was sorry he had not stabbed the Lord Keeper in his chair the moment he had pronounced judgment." For this imprudent speech he was committed to the Tower. Bacon appears to have conducted himself with great and commendable moderation. Writing to Buckingham, he says, "I pray your lordship, in humbleness to let his majesty know, that I little fear the Lord Clifton, but I much fear the example that will animate ruffians and *rodomonti*, extremely against the seats of justice, which are his majesty's own seats; yea, and against all authority and greatness, if this pass without public

censure and example, it having gone already so far, as that the person of a baron hath been committed to the Tower."

Exalted as is the dignity of the judge, his labors are severe, his responsibility heavy. He is often placed in such situations as require from him the utmost control of his feelings, while his daily occupations demand the constant exercise of the highest faculties of his mind, and this especially in the dispensing of criminal justice, and most especially at a period when our criminal code was disgraced by a severity, unknown to almost every other country in the world, and unworthy of a people to whom religion and civilization were known. Remembering that he was placed on the bench not to make but to administer—not to alter but to *declare* the law—a humane and intelligent judge must have felt, and perhaps at times may even now feel, a severe conflict between his feelings and his duty.

Sir Giles Rooke had once to preside at the trial of a young woman, who was charged with having stolen a saw, valued at ten pence, from an old iron shop.—The evidence was clear against her; but it was proved that she had committed the offence from the pressure of extreme want. The jury felt the hardship of the case, and the cruelty of punishing with severity an offence committed under such circumstances; and despite the clearness of the evidence, consulted for some little time in doubt together. At length, however, they agreed, and the foreman rising with evident agitation, delivered their verdict, GUILTY. Upon this, Judge Rooke addressed them in the following terms: "Gentlemen of the jury, the verdict which you have given is a very proper verdict; under the circumstan-

ces of the case you could have given no other. I perceive the reluctance with which you have given it. The court, sympathising with you in the unhappy condition of the prisoner, will inflict the lightest punishment the law will allow. The sentence is that the prisoner be fined *one shilling* and be discharged; and if she has not one in her possession, *I will give her one* for the purpose." The audience, jury, and counsel, showed how deeply they were moved by the language of the venerable judge. However, "A popular judge," says Bacon, intending thereby a judge who looks not so much to the law as to popular applause, "is a deformed thing." This is a character which has been given, but by an unfriendly writer, to Sir Matthew Hale. Alluding to a cause in the King's Bench, Roger North says, "It was tried, I think, twice, but I am sure once before the Lord Chief Justice Hale, who was most propitious to a poor man's cause; and before him, *if any leaning were*, it was of his favor to that side that most seemed to be oppressed."

"Men in great place," says a great authority, "are thrice servants: servants of the sovereign or state, servants of fame, and servants of business; so as they have no freedom, neither in their persons nor in their actions, nor in their times." The duties which devolve on those to whom are confided the reins of justice, if honorable, are severe. And this is especially the case with the chancellor. The first equity judge in the realm, he is a minister of the crown, an important and influential member of the cabinet, and its adviser on the numerous legal questions which come, from time to time, under its cognizance. Thus is the foreign, colonial, and domestic policy of the empire

perpetually coming under his consideration. He has also to afford the sovereign his counsel on the subject of applications for an exercise of the royal mercy on behalf of condemned criminals. He has occasionally to attend the privy council. He is Speaker of the House of Lords, and is expected to take a prominent part in all debates of importance. Much of his time is also occupied in examining charters, letters patent, and other instruments which pass the great seal, for the legality of which and for their conformity with the warrants on which they are founded, he is personally responsible.

"There, my Lord," said Charles II, when delivering the great seal to North, "take it—you will find it heavy." Heavy indeed did he find it! On his deathbed, according to his brother, the Lord Keeper confessed "that he had not enjoyed one easy and contented minute, since he had had the seal." When somebody told Jeffreys, after he was promoted to the woolsack from the King's Bench, that he would find his business heavy, he replied, "No! I will *make* it light." This is such a speech as might have been expected from so unscrupulous and unprincipled a judge as Jeffreys—but to any man who thinks rightly and feels rightly the chancellorship of England will indeed be a heavy thing.

Shortly after Lord Eldon succeeded to the chancellorship, after the resignation of the Whig government of 1806, he is reported to have exclaimed to a right reverend bishop, "Lord Erskine, I am sure you need not envy me; for I'm confident it is far better to be a dray horse than a Lord Chancellor." When this observation was reported to Erskine he observed, "Why then does he not resign, and put a stronger horse into the team?"

Even as far back as the reign of James I, the chancellor's duties were very severe: when lord keeper Williams first held the great seal, the press of business was so great, that he was compelled to sit in his court for two hours before daylight, and to remain there until between eight and nine, and then repair to the House of Lords, where he staid till twelve or one: after taking some refreshment at home, he would return to his court and hear such causes as he was unable to hear in the morning; or, if he attended at council, he would resume his seat in chancery towards evening, and sit there until eight o'clock, and even later: on his reaching home after all this fatigue, he read all the papers which his secretaries laid before him; and then, although the night was far gone, would prepare himself for the House of Lords the next day. Whitelocke mentions himself and his brother commissioners sitting in chancery from five o'clock in the morning to five o'clock in the afternoon.

Sir Lancelot Shadwell, the present Vice-chancellor, in his evidence before the chancery commission, declared the business in the court was then so heavy, "that *three angels* could not get through it." Sir Thomas More, when he took his seat for the first time in the Court of Chancery, addressing the bar and audience, said, "I ascende this seate as a place full of labor and danger, voyd of all solide and true honor; the which by how much the higher it is, by so much greater fall I am to feare." Laborious indeed it was then, and still more laborious is it now —but void of honor it never was, and never will be; and all such professions of indifference to its dignity, because of the duties which ensue from that dignity,

as much deserve contempt as they meet with neglect. "When I was Chancellor," says Lord Bacon, "I told Gondomar, the Spanish Ambassador, that I would willingly forbear the honor to get rid of the burthen; that I had always a desire to lead a private life—Gondomar answered that he would tell me a tale; 'My Lord, there was once an old rat that would needs leave the world: he acquainted the young rats that he would retire into his hole, and spend his days in solitude, and commanded them to respect his philosophical seclusion. They forbore two or three days: at last one, hardier than his fellows, ventured in to see how he did; he entered and found him sitting in in the midst of a rich parmesan cheese!'"

In the distribution of Church patronage, the Chancellor, or the Judge, has a task to perform, which, though sometimes grateful, is oftener irksome:—"Two things," said Lord Chancellor Wriothesley, "my servants shall not gain by me—my livings and my decrees; the one are God's, and the other the king's."

Sir Edward Coke said, "As for the many benefices in my patronage, I give them freely to worthy men, being wont to say in my law language, that I would have church livings pass by livery and seizin, and not by bargain and sale" Lord Bacon appears to have considered the disposition of patronage, lay as well as ecclesiastical, as a sacred trust to be carefully and scrupulously performed. In sending Buckingham his patent, creating him a viscount, he says, "I recommend unto you that which I think was never done since I was born, and that which because it was not done hath bred almost a wilderness and solitude in the king's service; which is, that you countenance and

encourage and advance able men, in all kinds, degrees and professions. For in the time of the Cecils, the father and son, able men were by design and of purpose suppressed; and though, of late, the choice goeth better, both in church and commonwealth, yet money, and serving, and cunning canvasses, and importunity prevaileth too much: and in places of trust and moment, rather make able and honest men yours, than advance those that are otherwise because they are yours." "*Detur digniori,*" was his maxim; a maxim which, through a refined selfishness, will be that of every man, who is conscious of his own powers, and, in the spirit of a reasonable ambition, desires honor and advancement.

The following interesting anecdote has been recorded of Lord Talbot:—

A very important living in his gift becoming vacant, the Chancellor received a communication from Sir Robert Walpole, strongly recommending a friend of his to his lordship's consideration. Finding the candidate to be qualified, the Chancellor promised him the living. Shortly after he had done so, he was waited on by the curate of the late incumbent, with a memorial signed by almost all the parishioners, testifying to his merits, and his poverty, and entreating the Chancellor to use his influence with the new rector, to continue him in his curacy. Lord Talbot received the poor parson with his usual urbanity, and entering into conversation with him, inquired the value of his curacy. "Fifty pounds a-year, my lord," was the reply. "Well, sir," said the Chancellor, "I will not only grant your suit, but do what I can to get your salary raised;" and so dismissed the poor curate with an elate heart. Shortly after this the

rector-expectant called on Lord Talbot to thank him for his promise. The Chancellor took the opportunity of mentioning the curate's request, and begged that it might be granted. "I should be indeed happy to oblige your Lordship," replied the clergyman, "but I have promised my curacy to a particular friend." "*Promised your curacy!*—what sir, before the living is yours?" "Yes, my lord." "Then, sir," exclaimed the Chancellor, with warmth, "I will afford you an admirable opportunity of dismissing your friend—I will dispose of the living elsewhere;" and, without suffering a reply, dismissed the astonished "clerk." When the poor old curate waited on him to learn the result of his application, the Chancellor said to him, "I am, indeed, sorry to tell you, that I cannot get you the curacy." The old man bowed, and was about to retire, overcome with grief. "Stop, sir," exclaimed Lord Talbot, "though I cannot give you the curacy, I can give you the living, and yours it is; so you may write to your family, by the next post, and tell them that although you only applied for the *curacy*, your merit and your modesty have obtained for you the *living!*"

The lay patronage of the Chancellor is very considerable. He usually advises the crown in the appointment of the Judges, and of the inferior officers of his own court. Formerly the masterships in chancery were in his gift, but by a late act of parliament, the right of appointment to them has become vested in the crown. As an integral portion of the cabinet, also, the Chancellor possesses very considerable influence, and a voice in the bestowal of the great offices of state. This renders it necessary that he should be something besides a lawyer, and familiar with things

that are not involved strictly in the naked duties of a judge. Well does Dr. Hacket observe, that "the chancellorship of England is not a chariot for every scholar to get up and ride in." The degree of his influence and the extent of his patronage, however, depend on circumstances; although, under all circumstances, they are very considerable.

It does not follow, as a matter of course, that the Chancellor appoints the Attorney or Solicitor General. Even Lord Eldon, who possessed great influence in every cabinet to which he belonged, had not always the nomination of the law-officers. Thus, in the case of Lord Gifford, Lord Liverpool applied to Sir Vicary Gibbs, then Chief Justice of the Common Pleas, to name such a person as the ministry required, and he named Gifford, who was connected with him by marriage. As a general principle, it is understood, that the Chancellor selects the puisné judges, and the head of the cabinet gives away the chief justiceships.

In the vast number of church livings which are still in his gift, we may perceive traces of the time when the Chancellor was an ecclesiastical dignitary. This was once the case with almost all the judicial functionaries of the state.

In ancient times the clergy monopolized all the learning in the kingdom. They were statesmen, lawyers, sometimes generals, physicians, and surgeons. The honors of this last profession they were afterwards compelled to share with the barbers.

In the great trial which took place in the county court at Pennenden Heath, near Maidstone, between Odo, bishop of Baieux, brother to the Conqueror, and Lafranc, Archbishop of Canterbury, respecting

"divers manors of land in Kent and other counties, it appears that Agelric, *bishop of Chichester*, was brought thither in a chariot to discuss and instruct them in the ancient laws and customs of the land, as the most skillful person in the knowledge of them;" so runs that ancient record, the Textus Roffensis.

There was a "clerk" named Ranulph, living in the days of Rufus, whom William of Malmesbury calls "invictus causidicus," an *unconquered lawyer*. The same historian piously laments the excessive interest which the clergy took in their *legal* though not *lawful* studies. "Nullus Clericus nisi Causidicus," he observes, had become almost a proverb. In the reign of Henry III the ecclesiastical superiors of the clergy interfered, and forbad their practising in the secular courts; but the profits they derived from their practice made many openly defy, and others secretly evade this command. The coif,* or patch of black silk, which we see at the top of our serjeants' wigs to this day, was invented at this time in order to conceal the priests' tonsures. We may perceive, at present, many evidences that clergymen were the predecessors of our present "learned friends" at Westminster. The gown and band now worn, are clearly borrowed from the ecclesiastical habit; the wig is a later invention; the term "clerk" as applied to several officers in our law courts, points also to an ecclesiastical origin. The six clerks in chancery, were

* Daines Barrington (Observations on the more Ancient Statutes, p. 250) remarks that the coif which the serjeants at law now wear, was originally an iron plate or scull-cap worn by knights. Coif means simply a cap, and the supposition mentioned in the text is far more rational than that of the learned commentator.

originally the clerks in the King's chapel, over whom presided the arch-chaplain or dean, called the chancellor, who was also the king's confessor, and was said to have charge of his conscience. The six clerks were ecclesiastics to a very late period of our history, and forfeited their offices if they attempted to marry. An act of parliament, passed in the fourteenth year of Henry the Eighth's reign, [Harg. MSS. No. 221,] relieved them from this disability, probably because they were no longer clergy. The clergy were not enabled to marry until sixteen years afterwards.

The office of Chancellor continued longer in the possession of ecclesiastics, than any other. Until the fall of Wolsey, when the sceptre departed from the church, and that overwhelming influence in civil matters which she had so long exercised, to the great detriment of religion, had for ever passed away, the great seal was usually held by a dean or archdeacon, or was confided to one of the king's chaplains. We are told that there were one hundred and twenty-six clergymen who, at different times, held this important and onerous office. After Wolsey's time, and previous to the days of Lord Bacon, it was held, at three different times, by dignified ecclesiastics; and Bacon himself was succeeded by Williams, Dean of Westminster, who was the last clerical functionary intrusted with the seals. We proceed to make a few brief observations on the important office itself.

To trace the rise of the equitable jurisdiction of the Chancellor in England, however interesting it might be would demand far greater space than we can afford. We may still observe, that the result of inquiries into the records of the chancery court, show, that the chief business of that court, in ancient times, did not

arise, as is often supposed, from the introduction of uses of land, as very few applications on the subject are found to have been made during the first four or five reigns after the equitable jurisdiction of the court appears to have been fully established. By far the greater number of the ancient petitions appear to have been presented, in consequence of assaults and trespasses, which were cognizable at common law, but for which the party complaining was unable to obtain redress, from the protection afforded to his adversary by some powerful baron or sheriff, or other officer of the county, in which they occurred.* To supply the defects and mitigate the rigor of the common law, is generally understood to have been considered the duties of the Chancellor at a later period. At first it may be supposed that the equity judge derived his precepts from his own heart—he was guided in his judgment by his own notions of right and wrong and the fulfilment of the claims of substantial justice, regulating his decisions by the intrinsic merits of each individual case was his single duty. In the reign of Edward IV, the great seal was delivered to Robert Kirkman, as lord keeper, with directions "that all manere maters to be examined and discussed in his court of chauncery, should be directed and determined accordying to equite and conscience, and to the old cours and laudable custume of the same court; so that if in any suche maters, any difficultie or question in the lawe happen to ryse, that he therein take th' advis and counsel of sume of the kynge's justices, so that right and justice may be duely ministered to every man."—(Rymer. Fœd.)

* See the Calendars to the Proceedings in Chancery, published by the Record Commission in 1827.

Whitelocke, a Lord Commissioner of the great seal in the time of the Commonwealth, observes, that "the judges of the common law have certain rules to guide them; a keeper of the seals hath nothing but his own conscience to direct him, and that is oftentimes deceitful. The proceedings in chancery are *secundum arbitrium boni viri;* and this *arbitrium* differeth as much in several men, as their countenances differ. That which is right in one man's eyes, is wrong in another's."

Until the reign of Henry VII, the pressure on the Chancellor was not considerable—not more than sixty causes a-year being heard on an average in the court of chancery. "The court of equity," says Coke, "increased most when Cardinal Wolsey was Lord Chancellor of England, of whom the old saying was verified, that great men in judicial places will never want authority." By this remarkable man, the jurisdiction of the Chancery became extended, although defined. He seems to have paid much attention to his duties—never deciding any cause of importance, without having first consulted the Judges; and, according to Cavendish, his gentleman usher, he had in his household "four counsellors learned in the law." Cavendish has left a very minute account of "the manner of the Cardinal's going to Westminster Hall," which is worth perusal. After hearing two masses, "going into his chamber again, he demanded of some of his servants if they were in readinesse, and had furnished his chamber of presence and waiting chamber: he being then advertised, came out of his privy chamber, about *eight of the clock,* ready apparelled, and in red, like a cardinal: his upper vesture was all of scarlet, or else of fine crimson taf-

feta, or crimson satin ingrained, his pillow of scarlet, with a black velvet tippet of sables about his neck, holding in his hand an orange, the meat or substance thereof being taken out and filled again with a part of sponge, with vinegar, and other confections, against pestilent agues, the which he most commonly held to his nose when he came to the presses, or when he was pestered with many visitors; and before him was borne the broad seal of England and the cardinal's hat, by some lord, or some gentleman of worship, right solemnly. And as soon as he was entered into his chamber of presence, where there were daily attending on him, as well noblemen of this realm as other worthy gentlemen of his own family, his two great crosses were there attending upon him; then cry the gentlemen ushers that go before him bare-headed, 'On masters before, and make room for my lord!' Thus went he down into the hall, with a serjeant-at-arms before him, bearing a great mace of silver, and two gentlemen carrying two great plates of silver; and when he came to the hall-door, there his mule stood trapped all in crimson velvet, with a saddle of the same. Then was attending him, when he was mounted, his two great cross-bearers, his two pillow-bearers, all upon great horses, in fine scarlet, then he marched on with a train of gentry, having four footmen about him, bearing every one of them a poleaxe in his hand; and thus passed he forth till he came to Westminster, and there alighted and went in this manner up to the chancery, and stayed a while at a bar made for him beneath the chancery, and there he communed, sometimes with judges and sometimes with other persons, and then went up to

the chancery and sat there till eleven of the clock, to hear suitors and to determine causes.*"

Wolsey, although an ecclesiastic, was not altogether disqualified for his office, having, as Cavendish, his affectionate biographer, tells us, acted for some time as a reporter in the star chamber, and thus acquired much knowledge of equity practice. Since his time, with a very few exceptions, the Chancellors have been persons who had received a legal education. Lord Shaftesbury, whose elevation was due to his political talents, is said, by Dryden, to have made an able Chancellor.

* Roger North gives a ludicrous account of the last time in which the judge's procession to Westminster, on the first day of term, was made on horseback, and which may be no inappropriate *pendant* to our extract from Cavendish. Speaking of Lord Shaftesbury, he says, "His lordship had an early fancy, or rather freak, the first day of term to make his procession on horseback, as in the old time the way was, when coaches were not so rife, And accordingly the judges, &c. were spoken to, to get horses, as they and all the rest did by borrowing and hiring, and so equipped themselves with black foot-cloths in the best manner they could. And divers of the nobility, as usual, in compliment and honor to the new lord chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows and balconies, with the foot-guards in the streets, to partake of the fine sight, and being once settled for the march, it moved, as the design was, statelily along. But when they came to straights and interruptions, for want of gravity in the beasts and too much in the riders, there happened some curvetting which made no little disorder. Judge Twisden, to his great affright and the consternation of his grave brethren, was laid along in the dirt. But all at length arrived safe, without the loss of life or limb in the service. This accident was enough to divert the like frolic for the future, and the very term after they fell to their coaches as before."

"Yet fame deserved no enemy can grudge,
The statesman we abhor, but praise the judge.
In Israel's courts, ne'er sat an Abethdin
With more discerning eyes, or hands more clean;
Unbribed, unsought, the wretched to redress,
Swift of despatch, and easy of access.
Oh! had he been content to serve the crown,
With virtue only proper to the gown!

One of his biographers thus characterizes the manner in which he discharged his duties. "With what prudence and candor, honor and integrity, he acquitted himself in that great and weighty employment, the transactions of the court of chancery, during the time of his chancellorship, will best testify. Justice, then, ran in an equal channel, so that the cause of the rich was not suffered to swallow the rights of the poor, nor was the strong or cunning oppressor permitted to devour the weak or unskilful opposer, but the abused procured relief suitable to their distress, and those by whom they were abused a severe reprehension answerable to their crimes. The mischievous consequences which commonly arise from the delays and other practices of that court, were, by his ingenious and judicious management, very much abated, and every thing weighed and determined with such an exact judgment and equality, that it almost exceeds all possibility of belief."*

If we may credit Roger North, Lord Shaftesbury's judicial career deserves to be charactertsed in very different terms. According to him, the chancellor at first slighted the bar, and refused to conform himself to the rules and practice of the court; worse than this, that he despised what North calls "the stated rules and

* Raleigh Redivivus.

methods fixed by practice and experience," and did much to realise Selden's definition of equity.* Afterwards, however, he is said by North to have been "entirely reclaimed; and from a trade of perpetually making and unmaking his own orders, to have fallen to be the tamest judge, and, to all forms and course, resigned to the disposition of the bar, that ever sat on the bench."

Charles II used to say of him, that he had more law than all his judges, and more divinity than all his doctors. He was not, however, presuming in the discharge of his office, for he used to sit in the court of chancery with a brown instead of a black silk gown, because he had not been regularly bred to the bar.†

* "Equity is a roguish thing: for law we have a measure; know what to trust to. Equity is according to the conscience of him that is chancellor; and, as that is larger or narrower, so is equity. 'Tis all one, as if they should make his foot the standard for the measure we call a chancellor's foot—what an uncertain measure would this be? One chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis all the same with the chancellor's conscience." Table Talk, p. 37. Lord Eldon thought differently on this subject. "I cannot agree," he says, "that the doctrines of this court are to be changed with every succeeding judge. Nothing would inflict on me greater pain in quitting this place, than the recollection that I had done any thing to justify the reproach that the equity of this court varies like the chancellor's foot." Gee v. Pritchard, 2 Swanst. 414.

† Shaftesbury was one of the most remarkable men recorded in English history. His wit and address were unequalled. The king once said to him, "Shaftesbury, thou art the greatest rogue in the kingdom." "Of a subject, sir," coolly replied Shaftesbury with a bow. The Duke of York, afterwards James II, meeting him shortly after he had delivered a very powerful speech against the government, did not shrink from applying to him many contumelious epithets. "I am glad your royal high-

North, however, in his Examen, declares that Shaftesbury used to sit in an ash-colored gown, silver laced, and full-ribboned pantaloons, without any black at all in his garb, unless it were his hat.

The accounts preserved of the habits and manners of our old judges, sound strange in modern ears. Fortescue,* the author of a Treatise "De Laudibus Legum Angliæ," who was chancellor to King Henry VI, writing in his time, says—

"You are to know further, that the judges of Eng-

ness has not also called me Papist and coward," was his retort. After inducing the king to issue a declaration of indulgence to dissenters, he attacked the measure violently in the House of Lords, and was very feebly answered by Lord Treasurer Clifford. The king and the Duke of York were both present at the debate, and after Clifford had spoken, the king whispered to the duke, "Brother, what a fool you have of a treasurer." "And, brother," replied the duke, "what a rogue you have of a chancellor."

* Sir John Fortescue is lineal ancestor to the present Earl Fortescue, whose eldest son, now lord lieutenant of Ireland, derives his title from Ebrington, a seat of the old judge's in Gloucestershire. He was called to the bar by the Society of Lincoln's Inn; the date of his call is unknown, but he became a serjeant in 1430, and chief justice of the king's bench in 1442. He was a faithful and devoted partisan of the house of Lancaster, and was made by Henry VI, his chancellor. In 1461 he was attainted of high treason by the parliament, for his obstinate adherence to his master. He fled with Queen Margaret and Prince Edward to Flanders, in 1463, and, while in exile, wrote his famous treatise, from which we have quoted in the text, for the purpose of giving the young prince an insight into the laws and constitution of his country. It is exceedingly valuable, and will repay perusal. He returned to England, and was taken prisoner at the battle of Tewksbury, but succeeded in making his peace with the house of York. Edward VI permitted him to retire in peace to his country house, where he died at an advanced age.

land do not sit in the king's court above three hours in the day, that is, from eight in the morning until eleven. The courts are not open in the afternoon. The suitors of the court betake themselves to the Pervise and other places, to advise with the sergeants-at-law, and other their counsel, about their affairs. The judges, when they have taken their refreshments, spend the rest of the day in the study of the law, reading the Holy Scriptures, and other innocent amusements, at their pleasure. It seems rather a life of contemplation, than of much action. Their time is spent in this manner, free from care and worldly avocations."

The gravity and dignity proper to the judicial character, render a participation in fashionable dissipations altogether as improper in a judge as in a clergyman. Without leading a life of seclusion—this is forbidden by the circumstances of their position—without abstaining from social intercourse, there are amusements and pursuits, which, however innocent in themselves, are incompatible with the propriety and gravity which should belong to the judge.*

There were, however, solemn feasts and entertain-

* An anecdote has been related of a worthy judge of the Common Pleas, upon his death, leaving in his will a bequest to his eldest son, of an ancient piece of plate called a "quaff." The will, for some reason or other, was brought under the notice of the Chancellor, and it was seven years after the judge's death, before the provisions were carried into effect. It then turned out that a simple-hearted old serjeant, who was one of the executors named, and whose knowledge did not extend much beyond law reading, had all along fancied that under the denomination of "quaff," the learned testator had bequeathed to his son, not a handsome piece of plate, but the old patch he wore on his wig—his coif!

ments at which they were expected to attend At the Inns of court there were revels, in which the gentlemen of the society entertained the judges by *dancing* before them. Dugdale has given a long account of these sports and pastimes of the olden time, in his "Origines Juridiciales," to which we beg to refer the reader. Not only, it would seem, were these "exercises of dancing" permitted, but actually enjoined, as being "thought very necessary," Dugdale facetiously observes, "and much *conducing to the making of gentlemen more fit for their books;* for by an order (of Lincoln's Inn,) made 6th Feb. 7 Jac., it appears that the under-barristers were by decimation put out of commons, for example sake, because the whole bar offended *by not dancing on Candlemas day preceding*, according to the ancient order of this society, *when the judges were present;* with this, that if the like fault were committed afterwards, they should be fined and disbarred." The following account of the "last revel," has often been printed before; but so much does it illustrate the ancient manners of the bench, that we could not avoid inserting it here.

"On the 2d of February, 1733, the Lord Chancellor came into Inner Temple Hall, about two of the clock, preceded by the Master of the Revels, (Mr. Wollaston) and followed by the Master of the Temple, (Dr. Sherlock,) then Bishop of Bangor, and by the judges and serjeants who had been members of that house. There was a very elegant dinner provided for them, and the Lord Chancellor's officers; but the barristers and students of the house had no other dinner got for them than what is usual on the grand days, but each mess had a flask of claret, besides the

common allowance of port and sack. Fourteen students waited at the bench-table, among whom was Mr. Talbot, the Lord Chancellor's eldest son; and, by their means, any sort of provision was easily obtained from the upper table by those at the rest. A large gallery was built over the skreen, and was filled with ladies, who came, for the most part, a considerable time before the dinner began; and the music was placed in a little gallery at the upper end of the hall, and played all dinner time.

"As soon as dinner was ended, the play began, which was 'Love for Love,' with the farce of 'The Devil to Pay.' The actors who performed in it, all came from the Haymarket in chairs, ready dressed; and, as it was said, refused any gratuity for their trouble, looking upon the honor of distinguishing themselves on this occasion as sufficient.

"After the play, the Lord Chancellor, Master of the Temple, Judges, and Benchers, retired into the Parliament-chamber, and in about half an hour afterwards came into the hall again, and a large ring was formed around the fire-place, but no fire or embers were in it. The Master of the Revels, who went in first, took the Lord Chancellor by the right hand, he, with his left, took Mr. Justice Page, who, joined to the other judges, Serjeants and Benchers present, danced, or rather walked, round about the coal fire, according to the old ceremony, three times, during which, they were aided in the figure of the dance by Mr. George Cooke, the Prothonotary, then of sixty: and all the time of the dance, the ancient song, accompanied with music, was sung by one Toby Aston, dressed in a bar-gown, whose father had been formerly Master of the Plea-office, in the King's Bench.

"When this was over, the ladies came down from the gallery, went into the Parliament-chamber, and stayed about a quarter of an hour, while the hall was putting in order; then they went into the hall, and danced a few minutes. Country dances began about ten; and at twelve a very fine collation was provided for the whole company; from which they returned to dancing, which they continued as long as they pleased; and the whole day's entertainment was generally thought to be very genteelly and liberally conducted. The Prince of Wales honored the performance with his company part of the time: he came into the music-gallery incog. about the middle of the play, and went away as soon as the farce of walking round the coal-fire was over."

Courtesy and amenity, so far from being inconsistent with dignity, are necessarily involved in it. That we have had judges who have violated, on the bench, the rules of good breeding recognized in private life, we are forced to confess; but we may observe that those judges, with all their learning and acknowledged integrity, have failed to obtain the approbation, or to conciliate the esteem, of the bar that practised before them. In our sketches, we have given some instances of this kind; and many of our readers, after a little recollection, could probably supply many more. Sir John Sylvester, who was for a long time common serjeant and recorder of London, rendered himself exceedingly obnoxious by the violence of his temper, and his utter disregard of the rules of courtesy.* It has actually

* Sir John Sylvester was the son of a Jewish or Portuguese physician, and obtained practice by a constant attendance at all

been said that he used to call the prisoner's calendar "a bill of fare!"

A judge, whose personal character and learning were above reproach, and who, in all other ways was a credit to the bench, without imitating Sylvester's coarseness, was in the habit of giving way to his temper in a manner not at all consistent with the dignity of his place. He once addressed a counsel, who was opening the pleadings, "Mr. ——, how you mumble!" "Now I hope to-day," he observed to the bar, one morning, on circuit, on taking his seat "that you will remember that you are gentlemen!" "Mr.——," on an other occasion, he said to a very eminent barrister, "you are a very learned man in your profession, but you are a very obstinate one. You say that you submit, when you dont submit at all, but keep your own opinion. What is the use of saying you bow, *when you don't bow*?" "Mr. ——, you have opened your case in the most bungling manner I ever saw in my life." "Really Mr.—— you hang down your head like a school boy." He once presided at the trial of a cause in which several very absurd and laughter-provoking things were said by the witnesses. The bar were convulsed with laughter. He in vain endeavored to check the ceaseless cachinations. The more he scolded, the louder every one laughed. There was one "youthful wig" that did not catch the general contagion. He was too solemn and unbending to degrade himself by committing so unseemly an act as laughing. He sat, a very Abdiel, with rigid muscles, and composed

the petty courts of the town. He was exceedingly dark in his complexion, and thus obtained the cognomen of "Black Jack."

visage. "Who is that very sensible young man,"* inquired the judge of his clerk, in an audible whisper. "I should be glad to have the pleasure of his acquaintance."

There have been judges who have forfeited the respect of the bar, and, consequently, that influence which it is desirable they should maintain, by a perpetual petulance of temper. Although the judge is not guilty of those violent excesses which have disgraced some who have worn the ermine, still his fractiousness, and his want of patience and self-control, render him almost equally disliked. With many virtues, and much ability, a judge of this stamp rejects the opportunities he possesses of conciliating the esteem of the bar, and the approbation of the public. The excellent individual of whom we have been relating some anecdotes, on one occasion exhibited his defect of temper in a singularly unfavorable manner. At the Salisbury assizes where he was presiding in the criminal court, a man was convicted of having stolen a sack of oats. He was sentenced by the judge to imprisonment for eighteen months, and to be kept at hard labor. As he was leaving the dock, he turned round and addressed the judge with an impudent grin, "I say, my lord, how am I to get *my wages* for my labor?" The judge immediately ordered him to be brought back, and

* Curran used to call the solemn apes,

"Whose visages do cream and mantle like a standing pool," who are the most despicable of mortals, because they add falsehood and hypocrisy to folly, "'legal pearl divers.' You may observe them," he would say, "their heads barely below water, their eyes shut, and an index floating behind them, and displaying the precise degree of their purity and their depth."

changed his punishment to *three years transportation.*

The court often consider it necessary to check observations of the counsel, and the long irrelevant stories of witnesses; but it is right that this should be done with proper dignity. A very worthy judge, now deceased, the late Chief Baron Thompson,* had a habit of checking witnesses by continually calling out "Stay, stay," from whence he got the name of the "old staymaker." Some of the judges that have previously presided in inferior courts of local jurisdiction, have very often displayed on the bench a neglect of proper dignity, so as, in addressing counsel or witnesses, to have approached very nearly to that familiarity whereof contempt has been pronounced the offspring. Jeffreys, who had been recorder of London, and whose practice had been in the inferior courts of the metropolis, was distinguished on the bench for his affected wit and vulgar humor. Lord Delamere, who was tried before him when he was chief justice of Chester, says that "he behaved himself more like a Jack-pudding than a judge.† He was mighty witty upon the

* When the chief baron was on circuit at the judges' dinner, there was present a learned dignitary of the church who did ample justice to all the good things on the table. When the cloth was removed, "I always think, my lord," said the reverend gentleman, "that after a good dinner, a certain quantity of wine does a man no harm." "Oh! no, sir, Oh! no, by no means,' replied the chief baron, smiling, "it is the uncertain quantity that does the mischief."

† Charles, used to say of Jeffreys, "that he had more impudence than ten carted ———." Lord Sunderland writing to Lord Rochester, in March, 1683, says, "I spoke to the king of Jeffreys, but I found him very much unresolved and full of ob-

prisoners at the bar, he was very full of his jokes upon the people that came to give evidence, not suffering them to declare what they had to say in their own way and method." Burnet says of him, that "he did not consider the decencies of his post; nor did he so much as affect to seem impartial, as became a judge; but ran out upon all occasions into declamations, that did not become the bar, much less the bench. He was not learned in his profession, and his eloquence, though viciously copious, yet was neither agreeable nor correct." We should observe, however that the recorder's chair has furnished the bench with many excellent judges. Lord Denman was for some time recorder; and it is an office which is usually considered an avenue to the honors of Westminster Hall.* Lord Eldon, of whom such frequent mention has been made in this work, was exceedingly humorous, and was fond of enlivening the tedium of a cause with what charitably disposed

jections against him, as that all the judges would be unsatisfied if he were so advanced, and that he had not law enough." Clarend. Corresp. vol. i, p. 83. The Earl of Dartmouth, however, declares that he heard Sir Joseph Jekyll, the eminent Master of the Rolls, say, that Jeffreys had a good knowledge of law. Lord Dartmouth continues, "he had likewise great parts, and made a great chancellor in the business of that court. In mere private matters he was thought an able and upright judge wherever he sat; but when the crown or his party were concerned, he was generally as Burnet represents him."

* When a vacancy occurred in the Exchequer bench in the reign of George II, a debate took place in the council, as to who should be appointed to supply it. The king speedily put an end to it, by calling out, "I will have none of dese. Give me de man wid de dying speech," meaning Adams the Recorder.

people, who do not aspire to the reputation of critics, might call—*wit*. The following case has been often in print, but we have still thought it right to give it a place in our pages, as to some of our readers it may, perchance, be new.

METCALFE *v.* THOMPSON.

The plaintiff had a patent for hair-brushes of a particular sort, and the defendant was selling, without license, brushes of the same sort. No counsel appeared for the defendant. The Lord Chancellor said, "this injunction must be *brushed off*, unless some counsel be here soon to support it." When counsel came in, Sir Samuel Romilly, who opposed the patentee, produced an old brush which had been used by a wig-maker for above thirty years, and which was the same, in principle, as the patent brush.

*Lord C.* "Is it a *Fox's Brush?*" (The owner of the brush was named Fox.)

*Sir S.* "It is, my lord."

*Lord C.* "Show me the brushes."

Upon this, four head brushes, and one knee-buckle brush were handed up to his lordship. Nothing was heard but peals of laughter. The only grave persons in the court were the plaintiff and the defendant.

*Sir S.* "Now, my lord, ingenious as the construction of these brushes may be, your lordship will find that it is exactly the same as this brush of my friend Fox, which has been used for thirty years."

*Lord C.* "Hand me up this old *fox's* wig: really this antique looks uncommonly well."

*Mr. Treslove.* "Your lordship will see, by looking at it, that it is the same *to a hair* as the patentee's brushes; only they look a little fresher."

*Lord C.* "That is, Mr. *Tress*-love, because they are younger. I have examined this old brush, and I see it is a curiosity of the kind: but when you and I get as old, and our tresses have been as well worn, we shall perchance look as antique."

Mr. Treslove said he had advised his client "not to *show his brush.*" *Lord C.* "Then I must say that you being a *pursuer*, were *at fault* there; for if an injunction is granted by this court, the article on which such an injunction is granted must be lodged with the master. I remember, in a case of waste, that a person actually *fixed an oak tree* to an affidavit he had made, to show the court of what nature the trees in question were." (A loud burst of laughter.)*

On Lord Eldon's good humor we did not sufficiently dwell, in our brief sketch of his character and career. Our attention has been drawn to the following anecdote, since our sketches have been printed. Lord Stowell, a short time before his death, relapsed into

* A similar strain of *wit* (?) was displayed in the trial of a cause in 1824, in which one Mr. How was plaintiff, and one Mr. Much defendant. Mr. Serjeant Pell, who was concerned in the case, punned on the parties' names all through his speech. After putting "How" through all the changes that it could undergo, he observed that "he had still a difficult task to perform, for *Much* remained to be done." He then went on and assured the jury, that, although the case was one of very great importance, and the proof was very brief indeed, yet if they gave the verdict, which he earnestly trusted they would, the reflection would at least be theirs, that they had *done* "Much." He then went on to speak of these two unhappy names together, and "How-Much" was presented in all its combinations; but, with all his wit, the learned serjeant did not succeed in joking the jury out of a verdict.

a state of mental imbecility. He was compelled to adhere strictly to a system which had been prescribed to him by his medical attendant, and which limited him to a very small quantity of wine. Lord Eldon came down to Earley Court to visit his brother, to whom he was most affectionately attached. The two brothers sat down to dinner together; and, in honor to his guest, Lord Stowell exceeded his prescribed number of glasses. As the wine circulated, a new life seemed to infuse itself into their veins, and these sexagenarian lawyers, each of whom had exceeded, by several years, the usual term allotted for human life, displayed in their conversation all the lively wit, and ready humor, which generally belongs to the vivacious temperament of youth.

Without affecting anything like austerity of manner, we may readily suppose that, in the intercourse of private life, a judge would feel it proper to be guarded, not only in what he says, but also, in what he hears. The ordinary topics of conversation respect questions naturally of considerable interest, and questions which the Judge may have to determine in this court. It is right, therefore, that he should keep his mind free from anything like pre-disposition or prejudice; for, if he be influenced by these, such as suffer from his decree, will find that freedom from corruption is not the only quality needed in a judge, to enable him impartially to distribute justice.

Mr. Bentham tells us that Lord Camden once said to him, that in his hearing, Lord Mansfield had declared he always made it a principle never to listen to any private or *ex parte* statements, lest they should in some way influence his judgment, when he had to pronounce judicially on the matter which they con-

cerned. Lord Camden added, that *his* principle was otherwise, and that he was never afraid of being improperly influenced by any thing which he heard out of court. But no one can doubt of the propriety of Lord Mansfield's conduct; and, indeed, that it is through the observance of the principle which he laid down, that the administration of justice can be alone secured in purity. Of Lord Keeper Guilford, his brother writes, "he would not endure that in private conversation with, or about him, any one should speak of causes depending in his court. It was said of a great master in painting, Lely, that he would not willingly see a bad picture; for he never looked upon one, but it tainted his pencil: so there can be no discourse of a controversy, which doth not leave a tincture of prejudice. Justice, therefore, should be deaf, except in the seat, and never blind there." Once, however, a gentleman happened to mention in his hearing, that he had, lately with his wife, levied a fine and that she was a *minor*. North was at that time chief justice of the Common Pleas: he sent for the gentleman and his wife, and the commissioners before him, and, after hearing all parties, vacated the fine. This conduct was certainly most proper.

A counsel arguing a case in the King's Bench, in the time of Edward VI, observed, that in the reign of Henry IV, "the king demanded of Gascoigne, Justice, if he saw one in his presence kill J. S., and another, that was innocent, indicted for it before him, and found guilty of the same death, what he would do in such case? and he answered, that he would respite judgment, because he knew the party was innocent, and make further relation to his Majesty to grant his pardon; and the king was well pleased that the law

was so: but there he could not acquit him, and give judgment of his own private knowledge."*

Of Mr. Justice Buller, Mr. Cradock says, "The last time I ever met him at dinner was on the day of his coming to Leicester, at the house of an eminent physician there. His lordship took leave of the company about twelve o'clock; but, lingering for a while, he returned to the table, and we played whist for several hours. At the assizes, on the Sunday, we all dined in the Newarks, Leicester; there were present, Judge Buller, Counsellor Newman, and some gentlemen who were all to meet again at Warwick: the general conversation was Donellan,† and his guilt was asserted by all; the only doubt seemed to be, that, as Lady Boughton, the mother, was all but a fool, her evidence, which was necessary, might not be effective; but it was acknowledged that she had been privately examined at the judge's chambers in town, and they thought she might be produced. I am sorry to say it, that Judge Buller's charge at Warwick was imprudent, for it pre-judged, or rather, condemned Donellan." The gross indecency in a judge,

* Plowd. 83. See also, 1 Leon. 161.

† The case of Captain Donellan is probably familiar to our readers. He had been a man of pleasure, and, becoming involved, poisoned his brother-in-law, Sir Theodosius Boughton, on whose demise he had a considerable reversion expectant. Walsh, well known at the beef-steak club, accompanied Donellan to his trial. Getting close to the dock, Walsh kindly explained to him all the solemnities before his eyes. "There Donellan," he said, "there's the jury, there's the judge! If you are found guilty, he will put on a black cap, and sentence you to be hanged. But it all depends upon the jury; for they have only to say one single *monosyllable*, guilty or not guilty, and you will be hanged or set at liberty!"

thus discussing, or, even suffering to be discussed in his presence, the guilt of a criminal that would afterwards be tried for his life before him, is so obvious as hardly to require comment. We may also regret that, if it was committed at all, this utter violation of the rules of obvious propriety should have been committed by a judge to whom the law, the profession, and the public are under such deep obligations, as they unquestionably are to the very distinguished person we have mentioned. But no feeling of respect, however merited, would justify us, in recording this instance of dereliction of duty, to fail in recording also the feeling of disgust at the act, though of regret for the agent, that it has given rise to in our mind.

With reference to the observation of Mr. Cradock, that, in charging the jury, Buller pre-judged the prisoner, a charge is advanced to which many of our judges have been fairly obnoxious. In fact, there is no portion of a judge's duty which requires more tact and discernment, and the exercise of powers rarely accorded to men, than the task of instructing a jury. Many who have been conspicuous, as very able lawyers, and more—as familiar with evidence, and capable of deriving from it, with ease and quickness, the conclusion which it warrants—have discharged this duty in a manner not so discreditable to themselves, as injurious to the dispensation of justice and the interests of society. To discharge it properly, requires a combination of talents which are seldom found united in one individual; to say, therefore, of a judge that he fails in this, is to say, that he is not strictly superior to the rest of his race.

"A man," says Lord Redesdale,* "may be an able judge in forming the conclusions of his own mind, upon facts in evidence upon the case before him; but he may not have the talent of conveying to a jury his mind on the subject; not as dictating to them what their judgment ought to be, but leading them by a sober use of their own judgments to the right conclusion. This talent, in persons whom I have seen presiding on trials by jury, is not a common talent; but it is one most important. The verdict of a jury ought to be the verdict of *their own* judgments,

* Lord Redesdale, for a notice of whom we should have been glad to have found place, was a very accomplished lawyer. A case was once sent him for his opinion, and a very short time, he was told could be allowed him for answering it. The case involved a question of great importance, which required some consideration to determine. In accordance with his client's request, Mitford wrote a long opinion within the prescribed time. In a few days the case was returned him for further consideration, and it was intimated to him at the same time, that his previous opinion had not been found very intelligible. "That was precisely what I intended," said Mitford. "In the short time that was allowed me, I could not have given a proper opinion, without risking my professional reputation. I gave you then an opinion which you would not understand, and on which you could not, therefore, act." Lord Redesdale was raised to the peerage on being appointed to the chancellorship of Ireland, the duties of which he discharged greatly to the satisfaction of the country. He was recalled by the coalition ministry, on their accession to power, in 1806. On taking leave of the Irish bar, he said, "That he had hoped to have ended his days in Ireland; but he was not permitted. His consent to depart from England was yielded to the wish of some who now concurred in his removal; this he owned he did not expect." It is to Lord Redesdale's enlightened benevolence that we owe the passing of the Insolvent Debtor's Act, by which a most beneficial change was effected in our jurisprudence.

founded on a clear, distinct, and luminous summing up of the judge. * * * The result of all my observations on trial by jury is, that the duty of the presiding judge is one of great importance, and that it is necessary he should have the advantage of *experience;* that he should be clear in his summing up of the evidence and his remarks upon it; but that these remarks should not be made with a view to lead the judgment of a jury to *his* conclusions, but to lead that judgment to *right* conclusions."

Some judges display great impatience if a jury should happen to take a different view of a case to themselves, and do not always restrain the expression of that impatience. "Gould," says Lord Redesdale, "was a very conscientious judge: he never fancied that, because a jury differed from him, they were therefore wrong. He might think them wrong, but not because they differed with him."

Some judges have displayed a most injudicious and improper anxiety to prove that a seat on the bench had not altogether destroyed their talents for advocacy; and after a counsel (perhaps some old opponent in many a sturdy struggle) has concluded his speech, have, in charging the jury, taken the opportunity of making a very able reply to the address from the bar. This is a proceeding which is extremely indecent; and is, in fact, a direct violation of duty. A judge, who was in the habit of doing so, got the very appropriate nick-name of "*the judge advocate.*" This worthy is reported to have boasted that *he had never lost above two verdicts since he had been on the bench.* Pemberton, before whom Lord Russell was tried, and who was twice removed from the bench, though a very able and eloquent advocate, made a very bad judge.

He used to boast that he *made* and not *declared* the law. Lord Keeper Guilford asserted that Pemberton, "in making law, had out-done king, lords, and commons." Sir James Eyre, chief justice of the common pleas, was remarkable for the quickness of his apprehension, and for the facility with which, very early in a case, he apprehended its true bearings. He never, however, interrupted counsel in their arguments, nor displayed any overweening attachment to his first impressions. He succeeded in keeping his mind free from any thing like undue partiality or prepossession. Few judges appear to have been so open to conviction, although few were so capable of forming such correct views of the real value of the arguments presented to him. This was also a remarkable characteristic in a judge who has lately retired into private life, after having been for many years the object of veneration to the bar, and of respect to all who had an opportunity of seeing and appreciating the admirable spirit which distinguished his judicial career—we need hardly add, that we allude to Sir John Bayley.*

Of Sir M. Hale, Roger North observes, that "he was an upright judge, if taken within himself; and

* This amiable and excellent man, not more conspicuous for his profound knowledge than for his unaffected and acknowledged piety, is said to have made the following observations, after the conclusion of a very obstinately contested "horse cause." "Take my advice, gentlemen," said he, "and accommodate matters of this kind, if possible; for men lose more than twenty-five pounds in bringing an action on the warranty of a horse, even if they win; and such is the danger, from the evidence common in cases like this, that justice is no security of success to a man. I perceive that the gentlemen below me do not approve of this doctrine, but the truth must be told sometimes."

when he appeared, as he often did and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations, and, sometimes, the very habits of persons. If one party was a courtier, and well-dressed, and the other a sort of puritan, with a black cap and plain clothes, he insensibly thought the justice of the cause was with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial; and the loyalist had always a great disadvantage before him." But North is a suspected witness. Like a great number of others, without being a retailer of intentional falsehood, he was, from his prejudices and extreme opinions, altogether unable distinctly to apprehend the truth.

The influence of a judge depends almost altogether on his bearing towards the bar. It is not, however, creditable to the profession, that they should be always taking a nice measure of the competency of the judge before whom they plead, and should slight the dignity of an office, simply because it is unworthily filled. From the squabbles between the bench and the bar, the public are led to despise both; and to conclude that there must be some truth in those wholesale objections which ignorant reformers have advanced against the whole system of our judicial establishments, and even the laws which they enforce.

"To the junior part of the bar," writes Mr. Espinasse, "Lord Kenyon was un-encouraging and ungracious; to those more advanced in the profession, assuming and offensive. An irregular application made to him by the former, though it proceeded from inexperience only, was received without the indulgence

that was due to it; if made by the latter, was refused with contumely." Dr. Dibdin, however, gives a very different account of Lord Kenyon's conduct towards him. When young, it was the doctor's custom to attend the court of king's bench, in which Lord Kenyon then presided. "It was usually my good fortune (being very regular in my attendance) to obtain a standing-place just above Erskine and Mingay, who, after a short time, seemed to recognize and to nod to me. The chief justice sat close by: one day, on retiring, he accosted me, and said, 'Well, young gentleman, do you intend to become one of us?' I replied, unhesitatingly, but respectfully, 'I should like it very much.' '*Try then*,' was his immediate rejoinder. These words, which were always uppermost in my mind, directed me, in the first instance, to the bar."

To Lord Mansfield's attention to the students in court, Mr. Espinasse has borne testimony: "They were admitted," says he, "to a seat on the bench, and allowed there to take their notes without interruption. The present Lord Grenville was a contemporary student with me; he, at all times, sat on the bench, on the right hand of Mr. Justice Ashurst, in which place he took his notes. This mark of attention, shown only to him when the court was full, was considered as a compliment to his rank. At *nisi prius*, every student of the four inns of court enjoyed an equal indulgence. The conduct of the king's counsel was distinguished by similar courtesy: we were invited to sit within the bar, as affording us a greater facility of taking notes." According to the respect paid to the bar by the judges, is the respect the judges receive from the bar. Mr. Justice Leblanc, if we are to be-

lieve the writer from whom we have so often quoted,* was greatly disliked by the bar, from his stiff and haughty carriage. He always appeared to be in dread, lest, in adopting a less constrained bearing, he should become familiar and despised. He was ever the judge: probably wanting in his mind the essentials of dignity and self-respect—he sought to cover his defects by what Rochefoucault calls "a mysterious carriage of the body." Lord Bacon bids him, who has risen to great place, "not be too sensible or too remembering of his place, in conversation and private answers to suitors; but to let it rather be said, 'When he sits in place, he is another man.'" There is a happy medium in these things, if one only could hit it. There is nothing more remarkable, in many of the most eminent of our lawyers that have graced the bench, than the agreeable and cheerful manners that have distinguished them in private life. A learned baron of the exchequer, one of the ablest lawyers we can boast, is well known as the humorist of the bench; and yet there is none who is looked up to by the bar with more esteem and respect.

A short time ago he was dining at one of the city feasts, at which, as is not infrequently the case, there was so great a noise after dinner, as rendered the toastmaster's voice almost inaudible. This worthy, instead of giving "the army" and "navy" together, separated the two services; when, therefore, the second toast was drank, the attorney-general, supposing it was the bar which was proposed, rose to return thanks. Mr. Baron ——— being fortunately placed, perceived and enjoyed the learned gentleman's mistake. "Mr.

* Mr. Espinasse.

Attorney, Mr. Attorney," said he, smiling, "give me leave to tell you, navy is not spelt with a *K!*" In the last* assizes, on the trial of a cause respecting the right of a copyholder to dispose of some "boulder stones" on the land, Mr. Sergeant Wilde contended that he would have the same right to do so as he would have to pick up any meteoric stones which fell on his land—"I think he would burn his fingers, if he tried it, brother Wilde," observed the baron, with a smile irresistibly amusing.

We have already expressed our regret that the intercourse which was formerly maintained between the bar and the bench should have so greatly diminished. There was committed, however, great abuse of the privileges which were then allowed. There is a propriety in these things, the violation of which is greatly to be dreaded.

George II was on very intimate terms with the Duke of Richmond of his day. The duke had a friend, a doctor of divinity, who, besides great learning, was a most accomplished mimic, and could counterfeit with great exactitude the mewings of a cat. The duke had frequently mentioned to the king that he had a friend so accomplished, and begged permission to place him one day behind his majesty's chair at dinner, in order that he might judge whether he overrated his friend's powers of imitation. The king at length consented; and one day, accordingly, when the king was seated at table, the learned doctor was privately introduced, and took up his station immediately behind the king. His majesty was for some time amused with his powers of mimicry; but upon turning round to examine the ap-

* Spring assizes, 1839.

pearance of the person who had afforded him so much amusement, was shocked by perceiving him arrayed in full canonicals. He immediately exclaimed to the duke, "Do take him away! do take him away! I cannot bear buffoonery from a man in such a dress."

How absurd a judge may render himself by placing himself in a position not suited for him, the following anecdote, related of Lord Alvanley, the Master of the Rolls, by Sir Egerton Brydges, will prove. "I commanded a troop of fencible cavalry; and our colonel being very justly proud of his regiment, and anxious to show it off in all his manœuvres, begged his friend, the learned knight, to come and review it, on one of the downs near the city; no doubt, because he thought him as good a judge of a regiment and its movements, as he was of all the intricacies of a question at law; and his honor being a very good-natured man, not at all like Sir Edward Law, then only king's counsel, obeyed the summons. The little man, though I observed him something timorous and fidgetty, was placed in the front of the battle, and desired to inspect us with the severest scrutiny, for our colonel was sure that he would find nothing but to praise. At length came the charge—the colonel assured him he might keep his station, for all was as safe as on his seat in the rolls court, and that at the word "halt!" the whole six troops in a line would stop dead, however loudly and fiercely they should come rattling on towards him. Unluckily the whole were fired with glory, and began to increase their speed, till, being on a blood-charger of considerable swiftness, my horse could not bear the clutter behind him, and off he shot beyond my momentary control. His honor was right before me—he gave a shriek and a groan—I saw his distress, and by

one mighty effort brought up my horse, and had the happiness thus to save the life of this eloquent oracle of the law, over whom I must otherwise have gone, sword in hand; and what a crush and manglement would then have ensued! The colonel made many apologies, and I got a severe rating."

At present, no counsel would venture to act as Mr. Newnham, an eminent advocate of the last age, is said by Mr. Cradock to have acted towards him. In former times it was the custom at Leicester to have an assize ball, at which, of course, the high sheriff was present. On one occasion, Mr. Cradock, who filled this office, attended the ball, as usual, and did not leave it until it was very late. As he had to dress and wait on the judge very early in the morning, he had not much sleep that night. Next morning, when the judge had taken his seat, Mr. Newnham stood up and said, "My lord, the high sheriff has only been in bed for about an hour, I understand, and I am sure he would be very happy to return to his lodgings, if your lordship would please to dispense with his attendance." Mr. Cradock both felt and looked extremely embarrassed, having never said a word on the subject. The judge looked very condescending, and the court laughed, whilst Mr. Newnham stood by, enjoying the high sheriff's embarrassment.

Foote used to relate the following anecdote of Clayton, lord chief justice of the king's bench in Ireland. This learned judge, who was an Englishman, knew very little of the laws and customs of the country in which his judicial duties lay. One day he observed to Mr. Harwood, a barrister eminent alike for his learning and his wit, that "numerous as were the English laws, one was found to be a key to the other; whereas

here," said he, "it is just the contrary, as your laws are so continually clashing, that, upon my word, at times, *I don't clearly understand them.*" "Very true, indeed, my lord," replied Harwood, with the utmost gravity, "*that* is what we all say."

It has been said that a base motive has sometimes actuated the judges in patronising particular counsel; that, in fact, the patronage has been bought—the patron sharing in the gains the patronised are enabled by his patronage to realise. That this has been the case, and that judges have thus far abused their power, we fear cannot be doubted; but we may very reasonably doubt whether the system has been frequently pursued, or that such a motive has always operated where it has been said to have done.

It is not necessary for us, in this work, to enter with any minuteness into the question of the authority which the bench exercises over the bar. The extent and precise nature of that authority, it is hardly to be expected we should determine here.

"If the serjeant cannot be of counsel here, we have the power of assigning another to plead. We cannot deprive him of his serjeantry, for that has been given him by the king, but we can *estrange him from the bar*, so that he shall not be allowed to plead. * * * If he will not be of counsel of our assignment, we can prevent him pleading at the bar. Serjeant Genney on this observed, "I have seen my master, Cheyne, chief justice of the king's bench, come into this court, and require the serjeants to be counsel in a plea before him; and if they would not, he would have *prevented* their pleading in the King's Bench."* This is an important case, for if the ser-

* Year Books. II. Ed. IV. Trin. 2.

jeants were thus subject to the superintendance of the court, *a fortiori*, the apprentices or outer barristers were so too.

It would seem that whenever anything fell from counsel, pleading at the bar, which was considered disrespectful to the law or constitution of the country, the judges had the power of checking, and, perhaps, of reprimanding, the advocate. In the famous case to which we have before alluded, when Coke so nobly maintained the independence of the judicial character, despite the threats of the king, one of the charges brought against him was, having *suffered* a serjeant in argument to advance "divers positions contrary to the king's prerogative."* In his vindication, Coke, by merely replying, that he did not consider the royal prerogative to have been attacked, in effect acknowledges that he had, as a judge, the power had he thought proper to have exercised it, of stopping these observations. Nathaniel Bacon, in his Discourse on the English Laws and Government, and who writes not much after the time of Coke, mentions that judges on the bench would not suffer William the First to be called the *Conqueror!*

In the management of a cause, the judges of early times were expected to interfere. At times, doubtless their interference was beneficial; but we have learned too well the benefit of giving to the advocate

* The positions were, that the translations of Bishops were against the Canon Law, and that the king had no power to grant commendams, but in cases of necessity, which necessity, it was remarked, could never arise, as no man was bound to exercise hospitality beyond his means. For the expression of opinions like these, an advocate was, in those days, liable to censure.

an almost unlimited freedom of action and speech to desire to see that interference again adopted.

"Lord Burleigh," says his biographer, "would never suffer lawyers to digresse or wrangle in pleadinge, advising counsellors to deal truely and wisely with their clients, that if the matter were naught, to tell them so, and not to soothe them; and where he found such a lawyer, he would never think him honest nor reccommend him to any preferment, as not fit to be a judge who would give false counsel."

In determining as to the hearing of counsel, the court exercise a very important duty.

"I know," said Lord Bacon, on taking his seat in chancery, after he was appointed Lord Keeper, "that there have used to attend at this bar a number of lawyers that have not been heard sometimes, scarce once or twice in a term; and that makes the client seek to great counsel and favorites as they call them, and that, for every order that a mean lawyer might despatch, and as well. Therefore, to help the generality of lawyers, and therein to ease the client, I will constantly observe that every Tuesday and other days of orders, after nine o'clock strucken, I will hear the bar until eleven, or half an hour after ten at least. * * * I will hear any judge's son before a serjeant, and any serjeant's son before a reader."

It is to Lord Mansfield we owe the introduction of the practice, since pursued in the King's Bench, of going through the bar, by which each has an opportunity of being heard. Previously, it was the custom for the Chief Justice to call on the King's counsel in rotation, until they had exhausted their motions, and then the after-bar had a chance of being heard. The unfairness of this proceeding is obvious: its relinquish-

ment reflects high credit on Mansfield. Another act of his is entitled to an expression of approbation. When Mr. Dunning, who was solicitor-general, left office in 1770, without a silk gown, Lord Mansfield said that he had resolved, looking to his late position and to his large business, to call on him after the king's counsel, although not entitled to that distinction by his standing. The whole bar concurred in approving of this act, which was all the more to be admired, seeing that the Chief Justice had a personal dislike to Dunning, and, on more occasions than one, came into personal conflict with him.

Burke says, "the judges are, or ought to be, of a reserved and retired character, and wholly unconnected with the political world." Yet we know—unfortunately for the profession, and still more unfortunately for the country—that it has been political considerations that have raised many a judge to the bench. In his famous six hours speech on the State of the Law, Lord (then Mr.) Brougham said, in reference to the appointments of the judges, that it was a custom "that party as well as merit" should be studied. "One half the bar," he adds "is thus excluded from the competition; for no man can be a judge who is not of a particular party. Unless he be the known adherent of a certain system of government—unless he profess himself devoted to one scheme of policy—unless his party happen to be the party connected with the crown, or allied with the ministry of the day, there is no chance for him; that man is surely excluded."

To their great credit, this system was first departed from by the whigs, on their accession to office, in 1830, when they appointed Lord Lyndhurst, who had

been the most active member of the party opposed to them, to be the Chief Baron of the Exchequer. This conduct, so creditable to them, was imitated by the conservatives, during the short administration of Sir Robert Peel, in 1835, when a puisne judgeship was offered to Mr. Bickersteth, at present Lord Langdale and Master of the Rolls. The evil complained of—if it be an evil—is an evil which must of necessity belong to every free government; to every government in short, which depends on public opinion as its basis, and which must, therefore, be a government of patronage. No one can, however, charge our judges with having suffered their political feelings to interfere materially or palpably, with the discharge of their duties. We use the adjective "palpably," advisedly; for if the influence of political prepossessions was *perceived* distinctly to sway the minds of the bench, and to affect their judgments, the confidence at present entertained towards the decisions delivered in Westminster hall would at once vanish, and the judicial character would immediately forfeit that veneration which is, at present, entertained for it in the country.

Down to the year 1605, the judges of England were not, as such, disqualified from sitting in parliament; and we find that in the 31st year of Henry VI, a Baron of the Exchequer not only sat as a member of the House of Commons, but actually presided as Speaker. At that time, however, the Barons of the Exchequer were regarded, not so much as judges, as officers of the king's revenue, and no more unfitted for parliament than other ministerial officers. In the year 1605, the committee of privileges decided that the Chief Baron of the Exchequer was disqualified for

election by his office, seeing that he was liable to be called on by the House of Lords. This has never been extended to Masters in Chancery, although they are regularly in attendance in the House of Lords, and are in effect servants of that body, and constantly employed like the Judges in carrying their messages to the Commons.

It has been sometimes objected that, although no violent political partialities are ever displayed on the bench, still there is generally exhibited in that place a bias towards *things as they are*, a feeling of unfriendliness (to use no stronger term) to change, which is manifested, as well towards improvement, as towards mere idle or mischievous innovation: that wherever they have been politicians, as one of them—the Chancellor—is compelled in some degree to be, they have usually exhibited very decided conservative tendencies.* This is natural—it is more; it is desirable. It is natural, because accustomed to administer to a particular system, conversant with its principles, and knowing, by personal experience, that for the vast number of cases brought under their notice, it is capable of effectuating the objects for which every system of jurisprudence exists—the protection of property, the redressing the wrongs of the injured, and the punishing the offences of the guilty, all change is, in their view, for the worse. It is desirable, because mischief incalculable in amount would ensue, were they otherwise disposed, and did they any-ways

* Mr. Hazlitt, in a good-humored criticism on Lord Eldon, contrasts his vacillation as a judge with the decision which he displayed as a politician. "The chancellor," he says, "may weigh and falter—the courtier is decided—the politician firm and riveted to his place in the cabinet."

lend a ready ear, or afford their assistance, to those who are ever anxious to disturb settled rules and alter existing laws. A great lawyer, who is now no longer amongst us, used to say, "that, in his time, no man could sleep in his bed without tinkering at some act of parliament:"—and hurtful indeed would the consequences be, if the judges lent the authority and influence of their names to such projects as these.

In conversation with Dr. Johnson, Sir Alexander Macdonald observed, "that the chancellors in Engand are chosen from views much inferior to the office, being chosen from temporary political views." "Why, Sir," replied Johnson, "in such a government as ours, no man is appointed to an office because he is the fittest for it, nor hardly in any other government; because there are so many connections and dependencies to be studied."

Lord Eldon is said to have declared that common lawyers have made almost as good Chancellors as any that have sat in Equity. He is himself an instance of this. This view—if indeed it were his—does not derive the corroboration, it might be supposed to do, from the fact, that in former times all our great Chancellors had either sat on the bench, or practised at the bar, of a court of common law, inasmuch as equity was not in those days so strictly a system as it is now; and as the great distinction, as far as the bar was concerned, between the two sides of Westminster hall was not observed—counsel practising usually in both the Chancery and the King's Bench.

James I was always anxious to place on the woolsack some one who owed no allegiance and bore no affection to the common law,* to which he himself

* "It may be," said his Chancellor, D[illegible] Williams, on tak-

had an especial dislike. This dislike is not difficult to account for. In the first place it was a system of which he knew nothing—the Scotch law partaking more of the nature of the civil law. In the second place, he was well aware that its principles were by no means friendly to his high-flown notions of royal prerogative and kingly power. The students of Cambridge, when the king was on a visit to the university, could devise nothing that could recommend them so effectually to the favor and patronage of the royal driveller, as their acting before him a burlesque drama, in which the common law, its rude tongue, and barbarous cultivators, were held up to ridicule and contempt.*

ing his seat in Chancery, "the continual practice of the law, without a special mixture of other knowledge, makes a man unapt and indisposed for a court of equity."

* James, it is well known, greatly preferred the Roman to the English common law, and this excited the jealousy of the professors of the latter, which displayed itself in the following manner. Dr. Cowell, an eminent civilian of that day, who was regius professor of civil law at Cambridge, master of Trinity-hall, and vicar-general to the archbishop of Canterbury, published a dictionary of legal phraseology, with the title of "The Interpreter." Coke, who held Cowell in aversion, represented to James that Cowell had put forth in his work doctrines reflecting on his prerogative. The archbishop Bancroft, however, put the matter in its true light, and Coke was thus foiled. He then, resolving that Cowell should not wholly escape, changed his course, and attacked him in the House of Commons for having inculcated doctrines inconsistent with the rights of the people. Whatever we may think of the motive for advancing it, the charge was undoubtedly true, for the doctrine of an absolute monarchy is very clearly expressed in the work. Dr Cowell was thrown into prison, and his book was ordered to be burnt by the common hangman. The obloquy which fell on this

When Lord Erskine was at the bar, a case was laid before him for his opinion. He found that involved some principle of equity-law: he declined therefore to say more on it, than it should be submitted to some gentleman practising on the other side of Westminster Hall. In a month afterwards, he was himself Chancellor. Nor was his promotion otherwise than in accordance with the custom in this country, that to the leading lawyer of the party in power should be confided the great seal and the presidency of the chief court of equity jurisdiction. William III was anxious to make the famous Holt, Chancellor, but that upright Judge declined the honor. "May it please your Majesty," said he, "I never had but one chancery suit in my life, and that I lost. I am unfit."*

A minister of the crown has hardly a more important duty to perform, than selecting those who should fill the judgment seat. In early times, strange notions appear to have been entertained as to the qualities fit for the judicial character.

Lord Burleigh, writing to his son, Sir Robert

civilian appears to have attached itself to his profession. Sir Matthew Ridley writes in 1639, "It was anciently said, 'Dat Justinianus honores;' but now it is so farre from that, that it conferres honors, as that it is almost a discredit for a man to be a civilian in this state, and the profession thereof doth scarce keepe beggarie from the gate."

* A courtier who held an important post in Queen Elizabeth's time, begged her to grant him an office connected with the courts of law. She told him that he was not fit for it. He confessed this to be the case, but said that he would appoint a sufficient deputy. "Do so," said the queen, "and then may I make one of my ladies, lord chancellor, and another, lord treasurer."

Cecil, respecting the appointment of some judges, says, that "For choise of a baron, I think Serjeant Heale, both for learninge, wealth, and strength of body to continue, being also a *personable man; which I wish to be regarded in all such officers of public calling*. He speaks of two others as being eligible, "though they be men of small living."

Absurd as this may read in modern eyes, there can be little doubt that personal appearance is closely connected with the power of obtaining both respect and esteem. If we assign no value to the outward show, we should hardly invest the judge with his magnificent robes, or place the imperial crown on the head of the sovereign.

It is remarkable to observe how much the business of a court has depended on the personal character of the judge who presides in it. At the time that Lord Lyndhurst was chief baron of the Exchequer, the business of that court increased considerably.*

"There cannot be a better direction for the duty of a judge," says Lord Commissioner Whitelock, "than that counsel which Jethro gave to Moses for appointing of judges, that 'They should be men of courage, and men of truth; fearing God, and hating covetousness.'"

It was not uncommon in an early age, when the chancellors were not lawyers, to issue a special com-

* The amount of business in a court is a tolerable criterion of the degree of estimation in which the judge is held. It is said that when in the reign of Charles I, the earl of Manchester was lord privy seal, he brought his court, the Court of Requests, into such repute, "that," according to Fuller, "what was formerly called the alms-basket of the chancery, had in his time well nigh as much meat in it as the chancery itself."

mission for hearing causes in chancery. We have a copy of one of these extant, addressed to the Master of the Rolls, four judges, six masters, and ten others; and which recites that Wolsey "having been employed for the sake of the peace and tranquillity of our kingdom and subjects of England, and for the interest, profit, and utility of the public, in which post he constantly exists; and considering, and piously compassionating the insupportable cares, labors, and fatigues which he on that occasion undergoes and suffers, and lest such singular fortitude of mind and body should be too much impaired, which God avert, through such fatigues, and he be not able to attend in good health as usual to our most necessary affairs with his chiefest case," &c. Fiddes, in his "Life of Wolsey," says that these commissioners were in general so dilatory in their proceedings, that they were very unpopular. Upon Sir Thomas More's accession to the chancellorship, "he found," says his biographer, Dr. Hoddeson, "the court of Chancery pestered and clogged with manie and tedious causes, some having been there almost twentie yeares." Such is the consequence of appointing incompetent persons to the discharge of important duties.

The personal favor of the sovereign, as well as political connections, has sometimes formed the passport to judicial eminence. In our times, indeed, this has been less frequently the case: from circumstances, to which we need not particularly advert, while the power of the crown has been increasing, the individual influence of the sovereign has been diminishing; and the patronage by which he has been enabled to gratify his feelings of personal regard, is now held by his ministers as a fund for the remuneration of

political services. This alteration is, perhaps, no fit subject for regret. We do not think that royal patronage has been less judiciously dispensed since its occurrence than before; and probably it has terminated the system of favoritism which formerly existed in our court to such a degree, and of which we can now hardly perceive the traces.

Lord Eldon, with all his legal accomplishments, owed much of the favor with which he was regarded by the Prince Regent, to his convivial and social qualities. Sir Nathaniel Wraxall tells us that in the year 1815, Eldon feeling, as he fancied, his health and strength failing him, and apprehending that he should be able no longer properly to discharge his duties, wrote to the Prince entreating permission to resign the great seal. The Prince, in reply addressed to him a letter, in which he besought him to withdraw his request; observing, amongst other flattering compliments, that the Chancellor "was the only man in the cabinet upon whom he could repose with confidence." Lord Eldon, thus solicited, yielded to the Regent's wishes. Sometime afterwards he was dining with Lord Liverpool, and after dinner, when the bottle had circulated more than once, in a moment of exhilaration, Lord Eldon put his hand into his pocket, and, taking out the Prince's letter, put it into the hands of his host. Lord Liverpool felt severely the preference thus assigned to the Chancellor, and next morning waited on the Prince, and, to his royal highness's great surprise, tendered his resignation. On being requested to state his reason for a step so little anticipated, he mentioned what had occurred; and then declared his conviction, that, "if confidence could no longer be reposed in him, it became him to

retire from office." The breach is said to have healed over another bottle, through the mediation of the Regent.

It is well known, that when Mr. Brougham received his silk gown, Mr. (now Lord) Denman complained, at a dinner which was given to him by one of the city companies, that he had been most unfairly passed over. This remark excited much observation at the period; and it was said that he had no right to have expected other treatment, considering the coarse insinuations he uttered in his defence of the Queen before the Lords—alluding to the famous Greek quotation,* of which so much has been said. Rumors of such remarks having reached Mr. Denman, he immediately waited on the Chancellor Lord Lyndhurst, and begged him to assure his Majesty that he had never used the quotation in the sense that had been ascribed to it. This the Chancellor promised to do; but, on further inquiries, after the lapse of some months, he informed Mr. Denman that he had been unable, or had not ventured, to mention the subject to his royal master. On this, Mr. Denman obtained an interview with the Duke of Wellington, and explained the matter to him. The Duke said that he conceived he had done no more than what his duty as an advocate required; and undertook himself to bring the subject under the attention of the king. In a few days the patent was made out. This conduct, so creditable to the illustrious Duke,

* The quotation in question is taken from Dion Cassius: lib. lxii. 13, who probably translated it from Tacitus (Annal. lib. xiv. cap. 60). The same idea is to be found in one of Cicero's orations against Verres. The passage is said to have been suggested to Mr. Denman by Dr. Parr, who found it in Bayle.

and so consistent with his character, we need hardly comment on. It was justly appreciated by the whole profession.

There have been many persons whose opinion is entitled to the highest respect, who have, upon more occasions than one, expressed their conviction that the chief judge in the Court of Chancery should be deprived of his political functions. Many reasons of great weight have been urged in favor of the change, one of which, and one entitled to very serious consideration, is, as Mr. Lynch has expressed it, "the inconvenience, delay, and expense which parties are put to in consequence of the change of Chancellors." There was a case of some importance, that of Lady Hewley's charity, which was hardly heard by Lord Brougham before he went out of office: it was then wholly re-argued before Lord Lyndhurst: and if the parties had not consented to abide by Lord Lyndhurst's decision, although no longer holding the great seal, it would have had to have been a third time re-heard before the Lords Commissioners. Now, remembering that in the great charter of our liberties, it is as much covenanted that justice shall not be *delayed*, as that it should not be sold, it is most assuredly the bounden duty of the rulers to remove this evil which presses so severely on all classes of the community.

Amongst those who have attacked, with warmest zeal, the union of judicial and political duties in the Chancellor, one of the most able, assuredly, is Mr. Basil Montague. He speaks "of the irreconcilable character of judge and politician; the judge, unbending as the oak—the politician, pliant as the osier; the judge, of a retired nature and unconnected with politics, firm and constant, the same to all men—the politician ever varying,

"Orpheus in sylvis, inter delphinas, Arion.'"

Lord Langdale, who takes a similar view of this subject, dwells greatly upon the fact, that "the mind of a Judge ought to be in a state of the greatest possible calmness and tranquility. His cool and undisturbed attention should always be given to the case before him; and he should be, if possible, protected from the agitation of political storms. Yet the Chancellor is left peculiarly exposed to them; and what is it that we may not see? The man is subject to human frailty; he is called from the judgment-seat to mix in party politics; and when his power is tottering to its foundation, on great political excitement, his feelings will show signs of their existence."*

"The weight of the chancery," observed a great equity lawyer, at the time of the Commonwealth, "is too much for the shoulders of one Atlas." Charles the First boasted that he had devised a plan for making the Chancellor, or Lord Keeper, attend to their judicial duties with greater punctuality, by appointing them for a fixed term of *three* years! This would hardly have met the evil which was, even in those days, felt so severely.

Performing his duties in the view of an enlightened and vigilant bar—his conduct watched by "those best of public instructors," the newspaper press—not much apprehension, it may be, need be felt lest the political interests of the Chancellor should influence, in any very excessive degree, his judicial decisions. But still it is perhaps not quite prudent to trust to these safeguards

* Speech of Lord Langdale in the House of Lords, on the 3d of June, 1830.

alone. Sir John Finch, when chancellor, declared, in 1639, that a resolution of the privy council would always be with him a sufficient ground for a decree in chancery.

There have been arguments, and of great weight, advanced against the proposed separation of the judicial and political functions of the Chancellor; and it is to be remarked that the general feeling of the profession is against the change. We have contented ourselves with stating the evil, and the means of obviating it proposed by high authority: the matter is one of great moment and no trifling difficulty. The immense extent of reading which is required of the judge, and which is very far from ceasing when he quits the bar, appears to offer an argument of some weight in favor of the views to which we have been making allusion.

Lord Eldon related an anecdote, which proves that it is well for the ends of justice that the knowledge of the judge should be extensive as well as accurate. "Mr. Solicitor-general," he said, "may remember a case in which he was concerned before me, where the gentlemen on both sides went into a lengthened discussion, communicated most detailed information, and had actually brought the case to a very extreme stage, and yet had never made the slightest mention of an act of parliament most vitally affecting the ultimate decision of the question: nor would it ever have been mentioned, had I not been so fortunate as to know it." This distinguished chancellor used to say, that his mind was always most affected by the cases which were *not* cited, and the points which counsel did *not* press.

There is no greater mistake than to suppose that if

the judge is familiar with the common law and the practice of the courts in which he presides, his learning is adequate to a right performance of his duties. Questions often come before him, the proper determination of which requires some acquaintance with foreign jurisprudence and other branches of learning. "How useful to a judge," says a writer, "a knowledge of the laws of the church was thought by my Lord Chief Justice Vaughan, will appear from this remarkable story:—It happened that civil as well as common lawyers appeared in an ecclesiastical cause in the court of common pleas, when one of the civilians, citing something out of the canon law, was interrupted by one of the judges, who, as it seems, had no skill in that law, and was not ashamed to own, and even glory in his ignorance, and was seconded by the other judge, who sat on the other hand of the chief justice; which so raised the just indignation of that great oracle of the law, that, rising up, and lifting up his hands towards heaven, he expressed himself in these or the like words: 'Good God! what great sin have I committed, that I should sit on this bench between two judges who boast in open court of their ignorance of the canon law!'" We must, in charity to these two learned judges, exulting in their ignorance, and proud of their darkness, suppose that they had inherited that jealousy and dislike of the canon law, and the courts* in which it is expounded, that

* We may be allowed to avail ourselves of this opportunity to express our sincere regret that the long-promised reforms in the ecclesiastical courts have not yet been effected. If something has been done, much more remains to be done, to relieve the church from the odium in which the abuses of these courts has, however unjustly, involved her. We have read an anec-

was felt, and with justice, by their predecessors, at a time when the ecclesiastical power was struggling to usurp to itself the functions of every other body in the kingdom.

A knowledge of the Scotch law is exceedingly desirable in a judge; and there are many of our greatest English lawyers who have shown themselves far from being unskilled in that branch of jurisprudence. Lord Eldon,* it is well known, was well versed in this subject.

Lord Gifford was equally so. His decisions gave so much satisfaction in Scotland, that when he visited Edinburgh in the course of a tour, he was met at the boundaries of the city by the lord provost and other authorities, and conducted to his domicile with great state. The corporation unanimously conferred on him the freedom of the city; and the university, sharing in the general opinion of his merits, admitted him to the honorary degree of doctor of civil law. Lord

dote of Dr. Johnson, requesting Walmesley, who was registrar of the ecclesiastical court at Peterborough, to give him an opinion on a tragedy he had just finished. Walmesley exceedingly approved of it, except in one particular. "In the third act," he said, "you have plunged the heroine into such fearful distress, that it is impossible for you to increase her misery afterwards." "But I can, though," returned Johnson. "How so?" inquired Walmesley. "I can bring her into an ecclesiastical court," was the reply.

* In Lord Eldon's time, it was customary for the House of Lords to ballot, at the beginning of the session, for three peers to sit with the chancellor, to hear appeals from the courts in Scotland. On one occasion, the result of the "vote by ballot" was, that the following persons should assist Lord Eldon in determining points of Scotch law—the Duke of Wellington, the Duke of Clarence, and another peer, equally qualified for the discharge of his duty!

Wynford and Lord Brougham, at a later period, have acquitted themselves to the satisfaction of the country in this respect. The latter it is well known, practised for some considerable time, and with much success at the Scottish bar. It is said, that while thus performing his duty of an advocate, he was fond, in argument, of adducing points of English law in illustration of his positions; and when he changed his sphere to the English bar, he was wont, in like manner, to illustrate his arguments by reference to the Scotch law. Lord Brougham, on several occasions during his chancellorship, found his knowledge of mechanics and natural philosophy of very considerable use to him. Sir Mathew Hale—the transition to him we acknowledge sounds something absurd—who was well skilled in both architecture and arithmetic, derived great advantage from his conversance in these two branches of knowledge, for when he sat, together with others, after the fire of London, to settle the differences between landlord and tenant, he was enabled to dispose of the disputes speedily, without the necessity of the parties seeking the decision of a court of law. To Hale's information on these subjects, which would seem to lie beyond the usual line of a lawyer's study, we owe in a great measure the rapidity and ease with which the city was rebuilt.*

It is not such subjects, however, that always occupy the study of the judicial functionary. Sir Giles Rooke, the worthy old judge of whom we have

* It was said that Gifford displayed, during the queen's trial, so much ignorance of foreign manners, that some one present, at the time he was conducting the examination of one of the witnesses, said that he presumed the attorney-general had never read a book of travels in his life."

already spoken, was a most inordinate devourer of novels, and would often sit up in bed all night, to sup full of the horrors that the most trashy circulating-library romance could afford. The productions of Mrs. Radcliffe, and Miss Burney formed the staple of his reading.

We have already alluded to the charges so frequently brought against our Judges, and the law which those Judges administer, of being dilatory in decision. On this head public opinion is most assuredly ill-informed. There is nothing more easy than objecting to the errors of a system; there is nothing more difficult than remedying those errors without producing evils greater than those removed. To object to a Chancellor, that he is slow in dispensing justice, keeping out of view, that a speedier decision would probably be less satisfactory, and ought to be less satisfactory, to the suitor, is unfair in the extreme. Slow justice is better than speedy injustice. "I have seen," said Bacon, when he took his seat in Chancery, "an affectation of despatch turn utterly to delay at length; for the manner of it is to take the tale out of the counsellor of the bar his mouth, and to give a cursory order, nothing tending or conducing of the business. It makes me remember what I heard say of a Judge that sat in chancery, that 'he would make forty orders in a morning out of the way;' and it was out of the way indeed, for it was nothing to the end of the business. And this is that which makes sixty, eighty, and an hundred orders in a cause to and fro, begetting one another, and, like Penelope's web, doing and undoing." Lord Erskine, when Chancellor, at first delighted the suitors with the expedition and despatch with which their claims were adjusted; but

when they found that the necessity for appeals had increased, their admiration of the Chancellor, and their gratitude for his exertions, rapidly diminished.

During the twenty years that Lord Harwicke was Chancellor, only three of his decrees were appealed against, and these three were confirmed.

An anonymous biographer [Sloane MSS. 3075,] observes of Coventry, that "the facility of his despatch in court, is best preserved in this, that at his first accession to the seal, he found two hundred causes in the paper ready for hearing, all which, (with such as fell in the way,) he determined within the year, so that the clients of the court did not languish in expectation of the issues of their causes. Where it falls into observation, that the high place is rarely well served but by men of law, and persons of deepest judgment in the statute and common laws of the land, whereby they may distinguish of cases whether they be proper in that court to be relieved in equity, without intrenching on the old inheritance of the subject."

The celebrated Lord Brooke once said, "Why should we stand upon precedents? The times hereafter will be good or bad; if good, precedents will do no harm; if bad, power will make a way where it finds none." It is, indeed, but wisdom in our Judges to be slow in disturbing past decisions, framed by their illustrious predecessors, and that they should remember that "un' opinione di Carpsovio, di Claro, di Farinacio, sono le autorita di coloro chi tremando dovrebbono quidiscare dei vite e fortune delli uomini." It is, by adhering to precedents, not, however, too closely, that the law of England has become a law of principle, so fixed and so settled, that—with certain

exceptions, too numerous perhaps, and many of them the result of the injudicious course pursued by some judges—we may calculate, as to a given case, on the decision of the courts, with a certainty inferior only to that which mathematical reasoning affords. "It is better that the law should be certain," says Lord Eldon,* "than that every Judge should speculate upon improvement in it." "Certainty," says Lord Hardwicke,† "is the mother of repose; and therefore the law aims at certainty." Mr. Ram, in his excellent little work, entitled, "The Science of Legal Judgments," has collected many instances in which precedents have not been pursued; the previous decision

* Sheddon *v.* Goodrich. 6 Ves. 497.

† Walter *v.* Tryon. 1 Dickens 245, In Stowell *v.* Lord Zouch, (Plowden 368,) we find in the Judges' argument the following passage: "They said that peace and concord is the end of all laws, and that the law was ordained for the sake of peace. And Dyer said, that for peace Christ descended from heaven upon the earth; and his law, which is the New Testament, and the old law, which are the Divine laws, were given only for peace here and elsewhere." And Weston cited St. Augustin, who says, "et concordia stat et augetur respublica et discordia ruit et diminuitur." Mr. Justice Catline then went on to give a long description of peace. "Which description is made up of the nature, properties, and advantages of peace, and of the incidents thereof; and therefore peace, which is attended with so many conveniences, ought to be preserved beyond all other things. And, hereupon, Dyer said, that one of the articles which the King, at his coronation swears to his subjects to perform and keep, that he will preserve the peace; for a more beneficial thing he cannot grant to them. And, therefore, those laws which bring the greatest peace are the most estimable." We have inserted this long extract as well that it exhibits the manner in which the judges of former times were wont to deliver their judgment, as that it illustrates the position in the text.

having been held not to be law. While, however, a judgment, which has been delivered by a court sitting in Westminster hall, remains unreversed, the case is law.

The courts have adhered often to precedents which they considered bad. Lord Eldon, in referring to a case in which Lord Thurlow had decreed that the deposit of a deed implied an agreement for a mortgage, said, "this decision has produced considerable mischief; and the case of Russell *v.* Russell ought not to have been decided as it was.* That decision has, however, been repeatedly followed, and must not be now disturbed." Sir James Mansfield, while he recognised the authority of a case, designated it as "a shocking decision."† Nothing can be more explicit than Sir William Grant's view of the subject: "It is not so material that these arbitrary rules should be fixed one way or the other, *as that they should be fixed.*" In the year 1769, was decided by the court of King's Bench, a very important case, well known to the profession, as Perrin *v.* Blake. Previous to the decision, the Duke of Richmond had purchased a very valuable estate in Sussex, of a person who had considered himself to be tenant in tail; and had, as such, suffered a recovery. Relying on the decision in the case of Coulson *v.* Couson, Mr. Booth, one of the most eminent conveyancers of the day, and whose opinion on the title was taken, considered himself justified in advising the purchase, which was accordingly completed. When, however, he heard of the decision of the King's Bench, in Perrin *v.* Blake, he was immedi-

* *Exparte* Hooper. 19 Ves. 478—9.

† Morgan dem. Surman *v.* Surman. 1 Taunt. 293.

ately seized with the greatest alarm, and obtained an interview with the Duke. He told him, that by his advice his Grace had been induced to purchase an estate with a bad title, and then acquainted him with the circumstances. The Duke observed that he supposed the matter would not rest with the King's Bench, and promised Mr. Booth he would watch the case wherever it should be carried. Mr. Booth, delighted with this promise, then informed the Duke that the vendor of the estate had a son, who was, at all events, tenant in tail, and that it was incumbent on the father, under the covenant of further assurance, to obtain the son's confirmation to the title. The Duke, however, regularly attended whenever the case was argued, until it was settled by the rejection of Lord Mansfield's views.

The authority which the Judges have at times assumed, have been altogether unwarranted by the constitution. They have, in effect, repealed acts of parliament. Barrington alludes to a passage in "Burnet's History of his Own Times," where he mentions an act of Charles the Second, with regard to the drawing horses a-breast on the highways, and which was so impracticable that the Judges on their circuits, directed the grand juries not to put it into operation. In the reign of Charles I, Sir Robert Berkeley, one of the Judges, in charging the grand jury at York, in 1636, declared, "That in some cases the Judges were above an act of parliament."

We have some remarkable cases on record in which Judges have acted on the opinion of this superiority. In Smith *v.* the Company of Armorers,* in which an

* 1 Peake, 148.

application for a mandamus to admit a person to the company, was met with the assertion that he had not been duly apprenticed, in conformity with the act of Elizabeth, Lord Kenyon made the following observations: "When the act was made, those who framed it might find it beneficial, but the ink with which it was written was scarce dry ere the inconvenience of it was perceived: and judges, falling in with the sentiments of policy entertained by others, *have lent their assistance to repeal this law*, as much as was in their power." This they did by a rigorous construction of the words of the act, so as to defeat the obvious intentions of the framers.* "The great operation of the statute *De Donis*," says the same eminent Judge, "was destroyed by the revival of common recoveries."† In the case of Russell *v.* Russell,‡ the principle of the 29 Car. II, c, 3, s. 3, was altogether disregarded, but Lord Eldon§ declared that the case "is not now to be disturbed."

The custom of raising the Chief Justice of the King's Bench to the peerage, immediately after his appointment, has not been of very ancient date, in fact goes back no further than the elevation of Lord Mansfield. Parker, Raymond, and Hardwicke, had filled the office sometime before they received the honors of the peerage; Sir Dudley Ryder was ennobled only on his retirement; and Sir John Holt—the *great* Holt—never received the honor at all. Since that

* It has been ignorantly said that Judges never can know the intentions of the legislators but from their language. Why then do they expound some statutes liberally, and others rigorously?

† Goodright dem. Burton v. Rigby, 5 Durnf. and East, 179.

‡ 1 Brown, C. C, 269. § *Exparte* Coming, 9 Ves. 117.

period, however the custom has been regularly pursued. If we may credit Sir John Fortescue, there is great danger that this practice will increase the House of Lords to an unprecedented amount; for of the Judges he says "that it has been observed as an especial dispensation of Providence that they have been happy in leaving behind them immediate descendants in a right line." With no chance of titles becoming extinct, and the necessity constantly ensuing for creating fresh titles, we may fairly expect the time when lords shall be as plenty as knights were said to have been just after the restoration! It is customary to confer the honor of knighthood on the puisné Judges.

Mr. Justice Heath* always refused, and declared he would die plain "John Heath;" which, in spite of every persuasion to the contrary, he did.

In some cases the puisné Judges, as a special mark of royal favor, have been made privy councillors.

* The Earl of Eldon, in his speech in the House of Lords in Lord Fife's case, referred to a decision in the Common Pleas: and in quoting the judgment of Mr. Justice Heath, delivered on the subject of how a blind testator should be treated, said, "Let me not name that learned Judge, without stating that I once had the honor to sit with him in the court of Common Pleas, and I cannot do justice to my own ideas of his professional knowledge: I was quite surprised at it. Lord Chief Commissioner Adam says, "I had the good fortune to meet Mr. Justice Heath often in private society, at Lord Loughborough's (when his lordship was Chief Justice of the Common Pleas) and elsewhere; and the same praise may be given to the universality and accuracy of his general knowledge, that Lord Eldon gives of his knowledge of law. His decisions were so prompt and correct, that there was much pleasure in appearing before him as an advocate. He was the first judge whom Lord Thurlow appointed, soon after he got the great seal in 1778."

Sir William Dugdale has enabled us to ascertain the salaries of our Judges in ancient times. In the eleventh year of the reign of Henry III, it appears that two of the Judges were paid ten marks a-year. each: but in the [illegible] year of the same King's reign, Justice of the common pleas received £20 a-year. Four years afterwards, an entry appears of a payment of forty marks a-year to a Chief Baron of Exchequer, and in the 38th of the same King, one of the Barons, it seems, received twenty marks. In the 43d year of Henry III, a justice of the King's Bench had £40 a-year; and the next year the Chief Justice of the Common Pleas received one hundred marks per annum, while a puisné Judge in the same court was paid no more than £40. The successor of this Chief Justice had his salary increased to £100 a-year, but the puisné Judges received no increase. It would appear that in the beginning of the reign of Edward I, the salaries of the Judges were diminished; the Chief Justices of the King's Bench and Common Pleas, receiving but £40 a-year, and the puisné Judges but forty marks; which continued until the 25th year of the same king's reign, when the salary of the Chief Justice of the King's Bench shrunk to fifty marks a-year, the annual fee of the Chief Justice of the Common Pleas being augmented to one hundred marks a-year and the puisné Judges and Barons being reduced £20. In the beginning of the reign of Henry IV, the Chief and other Barons of the Exchequer had but forty marks a-year—the Chief Justice of the Common Pleas the same—the puisné Judges forty marks—and the Chief Justice of the King's Bench £40 a-year. In the reign of Henry VI, we find a puisné Judge petitioning the king for an increase of salary.

TO THE KING OUR SOVEREIGN LORD.

R. H.

"Beseecheth mekely youre pove' suito' William Ayscogh, one of your justice of t[illegible]common benche, that were, he late by your comaundement was charged to take upon him the degree of Sergeauant of your lawe to his grete expenses and costes. And or he had ben' fully two yere in that office at the bare he was called by your heghnes unto the benche and made Justice, by which makyng Justice all his Wynnings that he sholde have hade in the said office of Sergeant, and alle the fees that he had in England weere and be cessed and expired from him to his grete empovrysshyng, for they weere the grete substance of his lyvelode: and also he hath suche infirmite in his eghen that he dredeth hym gretely of faillyng and perysshyng of his sight. Please it to your Heghness consideryng the premisses and how your said beseecher is the porest of alle youre Justices, and may noght mainteigne his said degree to your worship, as him oght to do withoute your gracious helpe and supportacion, to graunte of your benigne grace and bounteous Lordship unto your said beseecher fof terme of his lyve certeyn tenementes of the value of xxv. li. xij. S. and xd. by yere whiche ben conteyned in a cedull to this bill annexid after the forme and effecte of the same sedull and he shall hertely pray God for you."*

The Chief Justice of the King's Bench at present receives £10,000, and the other Chiefs £8000 a-year while the income of the puisné Judges is 5000.

We have thus hastily, and we fear unsatisfactorily,

*Arch. Vol. xvi, p. 2.

brought together some facts which relate to the Bench and the Woolsack; and, without pretending to have given a complete essay on the judicial character have perhaps afforded some materials suitable for such a work.

Can we conclude better than in the eloquent language of Coke:* "You honorable and reverend judges and justices, that do or shall sit in the high tribunals and courts or seats of justice, fear not to do right to all, and to deliver your opinion justly according to the laws; for fear is nothing but a betraying of the succors that reason should afford. And if you shall sincerely execute justice, be assured of three things: First, though some may maligne you, yet God will give you his blessing; secondly, that, though thereby you may offend great men and favorites, yet you shall have favorable kindness to the Almighty and be his favorite; and lastly, that in so doing, against all scandalous complaints and pragmatical devices against you, God will defend you as with a shield: 'For thou, Lord, wilt give a blessing unto the righteous, and with thy favorable kindness wilt thou defend him as with a shield.'"

* Inst. Epilogue.

## CHAPTER V.

### COMMENTS ON CONVEYANCING.

Modern and Ancient Conveyances—The History of Uses—Common Recoveries—Difficulties of the Conveyancer—Ignorance of the Law of Real Property—Scroggs, Lord Keeper Guilford, and John Seldon—Amateur Conveyancers—Profits of Lawyers—Strange Case—Advising on Abstracts—Custom of Conveyancers—Real property decisions—Lengthy Conveyances.

SOMNER, one of our most learned antiquaries, observes that, in his time, "an acre of land could not pass without almost an acre of parchment." The witty Dean of St Paul's, Dr. Donne, has satirised the prolixity of legal instruments in his time, when he mentions, amongst the various misdeeds of the lawyer, that

> "In parchment, then large as the fields he draws
> Assurances——————"

And Hamlet observed, pointing to the coffin of the lawyer, that "the very conveyances of his lands will hardly lie in this box." We may, in short, when we look on one of the ponderous conveyances of modern times, exclaim, as the Duke of Wellington is said to have done, when the first report of the common law commissioners was presented to him,—"Too much of it—too much of it—a d——d deal too much of it!"

Of ancient conveyances, we have many specimens extant; to some of which we beg to draw our readers' attention.

The following grant was made by Edward the Confessor to Randolph Peperking:

"Iche Edward Konyng
Have geven of the forest the keeping,
Of the hundred of *Cholmer* and *Dancing*
To Randolph Peperking and to his kindling;
With heart and hynd, doe and bock,
Hare and fox, cat and brock;
Wild fowell with his flock,
Partridge fesant hen and fesant cock,
With green and wyld stob and stock,
To kepen and to yemen by all his might,
Both by day and eke by night
And hounds for to holde,
Good and swifte and bolde,
Four greyhounds and six braches,
For hare and fox and wild cats,
And thereof Iche made him my book,
Witness the Bishop *Wolston*
And Bock ycleped Manyon,
And *Sweyn* of Essex, our brother,
And teken him many other,
And our steward Howelyn,
That besought me for him."

The following is a copy of a grant made by William the First to the ancestor of the Hopton family, in Shropshire. It was copied out of an ancient manuscript, and is to be found also in Stow's Chronicle, in which, however, the first four lines were left out, "which seems," says the transcriber, "to create that estate tail, by which Richard Hopton, Esquire, a gentleman of low fortune, but, haply may be, the right heir of the family, hath of late years, by virtue

of this charter, made several claims and commenced divers suits, both for this manor of Hopton in the Hole, in the county of Salop, and for divers others, the manors and lands of Ralph, late Lord Hopton; but hitherto, for aught I hear, without any success."

"HOPTON —— CO. SALOP.

"TO THE HEYRS MALE OF THE HOPTON, LAWFULLY BEGOTTEN.

"To me and to myne,* to thee and to thyne,
While water runs and the sun doth shine;
For lacke of Heyrs to the king againe.
I, *William*, king, the third year of my reign,
Give to the Norman Hunter,
To me that art both Line and Deare,
The Hoppe and Hoptoune,
And all the bounds both up and downe,
Under the Earth to Hell,
Above the Earth to Heaven,
From me and from mine,
To thee and to thine,
As good and as faire
As ever they myne were,
To witness that this is sooth,
I bite the white wax with my tooth,
Before Jugg, Marode and Margery,
And my third son Henry;
For one bow and broad arrow
When I come to hunt upon Yarrow."

The following is a specimen of the wills of the latter end of the 15th century, and is exceedingly interesting. From the obtrusive piety visible in every word, we may fairly presume it to have been the work of some monastic conveyancer:

* Probably this should be, "From me and from mine."

"In nomine Patris et Filii et Spiritus Sancti. Amen. The seventeenth day of September, the yer of our Lord Jhu Christ, a thousand four hundred and four, I Louys Clifforth fals and Traytor to my Lord God, and to alle the blessede company of Hevene, and unworthi to be clepyd a Cristen man, make and ordeyne my Testament and my last Wille in this manere. At the begynnynge I most unworthi and Goddys tratour recommaund my wrechid and synfule sowle hooly to the grace and to the mercy of the blessful Trynytie; and my wretched caregne to be beryed in the ferthest corner of the chircheyeard, in which parishe my wrechid sowle departeth fro my body. And I pray and charge my survivors and my executors as they wollen answere to fore God, as all myne hoole trest in this matere is in them, that on my stinking careyne be neyther leyd clothe of gold ne silke, but a black clothe and a teper at myne hed and another at my fete, ne stone ne other thinge whereby eny man may witte where my stynking careyne liggeth. And to that chirche do myne executors all thingis which owen duly in such caas to be don without any more cost saaf to poor men. And I also pray my survyvors and myne executors that eny dette that eny man can aere me by true title that hit be paid. And if eny man can trewly sey that I have do him eny harm in body or in good, that ye make largely his gree whyles the goodys wole stretche. And I wole alsoe that none of myne executors meddle or mynystre eny thinge of goodys withoutyn avyse and consent of my supervisors or sum of hem. Now, first I bequethe to Sire Phylype la Vache, Knyght, my Masse-boke, and my Portoos and my Boke of Tribulacion to my doughter, his wife. Et quicquid residuum fuerit omnium et singulorum bono-

rum et catalorum superius seu inferius non legatorum, do integre et lego Phillipo la Vache, Johanni Cheynee, et Thomas Clancow, Militibus libere sibi possidem," &c.

The ancient modes of conveyance were simple enough. Amongst an illiterate people written documents were, of course, comparatively rare; and other modes of indicating, or alienating, the possession of property, were of necessity adopted. We read of one mode of conveyance adopted in the times of the Saxons, the adoption of which would at once supersede the necessity of "Preston on Abstracts," and Bythewood's ponderous collection of Precedents: "one Ulphus, the son of Toraldus, turned aside into Cork, and filled the horn he was wont to drink out of with wine; and before the altar, upon his bended knees, drinking it, gave away to God and to St. Peter, the prince of the apostles, all his lands and revenues."* "We may see," observes Selden, "the conveyance of estate how easy it was in those days, and clear from the punctillios of law, and withal, how free from the captious malice of those pettyfoggers who would entangle titles and find flaws in them, and burn the swelling bundles and rolls of parchment now in use."† "At first after the conquest," says Ingulphus, "many lands and estates were collated or bestowed by bare word of mouth, without writing or charter, only with the lord's sword, or helmet, or a horn, or a cap; nnd very many tenements with a spur, with a curry-comb, or with a bow

* The dean and chapter of York are still in possession of a portion of the land thus bestowed.

† Selden. Janus Anglorum. Opera, vol. ii, p. 1001.

and some with an arrow." There were, however, some inconveniences attendant upon this system of "doing without the lawyers." Give me Bosehem," said Godwin, Earl of Kent, to the archbishop of Canterbury. The archbishop, admiring what he would be at in that question, saith, "I give you Bosehem." He straight upon the confidence of this deceit, without any more ado, entered upon an estate of the archbishop's of that name, upon the sea-coasts of Sussex, as if it had been his own by inheritance. And with the testimony of his people about him, spoke of the archbishop before the king as the donor of it, and quietly enjoyed it."

To produce notoriety of possession, was the great object of the ancient law of real property; and thus, when a field exchanged masters, the former possessor met within its confines its new owner, and transferred possession to him by delivering, in the presence of witnesses, a detached portion of the soil, or some other symbol. The transaction was recorded in writing; but it was the delivery of the clod that constituted, in the view of the law, the transfer of the possession. This was a relic of feudality. When William the Conqueror landed in the bay of Pevensey, his feet failed him, and, stumbling, he fell on the palm of his hands. The superstitious troops beheld with dread the augury of failure; one exclamation burst from the ranks; "Mal signe est çi!" "No," exclaimed William, as he sprang on his feet, "*I have taken seizin of the country*," and held up the clod of earth which he had grasped in his hand.* On this one of the soldiers

* Anecdotes of the exhibition of a similar presence of mind, have been related of many eminent characters in history. Every schoolboy remembers the story of Camillus. Plutarch, Vit. vol. i, p. 214. Edit. Schœfer, Lips. 1826. Liv. lib. v.

ran to a neighboring cottage, and pulling away a portion of the thatch, presented it to the Duke, bidding him to receive that symbol also, as the seizin of the realm which he was about to possess.

There were many circumstances which rendered this notoriety, however desirable upon principles of public policy, highly inconvenient, and at times exceedingly detrimental to the possessors of land. Indeed, the very object for which it was enforced, conflicted with the interests of those who were chiefly affected by its operation. From hence arose a practice, the perseverance in which has effected a total revolution in our jurisprudence, and produced effects, of such a character, as to render it difficult to over-rate their importance. The practice to which we allude, is of disjoining the right to property from the right to enjoy the use of property. While a certain individual continued the apparent owner, and was recognised by the law as owner, he held the land only for the benefit of another, or as it was styled for the *use* of, or in trust for, another. The advantages which resulted from this practice, to those by whom it was pursued, were great and manifold. To the clergy it afforded the facility of evading the statutes of mortmain; and they availed themselves of it to so great a degree, that parliament was compelled to interfere; and by the 15th Richard II, c. 5, the provision of the statute against mortmain were extended to these cases. Another advantage resulting from this method of conveyance was, that the tenant was delivered thereby from the vexatious fruits of feudal tenure. The fine to which the lord became entitled whenever the fee was aliened, could not, of course, be claimed when that alienation was unknown, and

was in its operation unrecognised by law. All the other consequences from the subsistence of the feudal system were in like manner evaded. Forfeiture of lands, which was also a result of the feudal principle, and which was the penalty the vassal paid for violating his allegiance to his lord, was also in this way prevented. The great controversy between the Houses of York and Lancaster rendered this especially desirable; and, consequently, we find conveyance to uses were very common in those times, and succeeded in preserving the ownership of lands, whether their possessors were of the party in power or not. This practice appears to have provoked the statute of 21 Richard II, c. 3, which extends the penalty of forfeiture to estates held to the use of the traitor.

Another advantage which resulted from the introduction of uses was the power which from thence resulted to the owner, to devise his real estate. It generally favored and facilitated the alienation of property, which was effected at common law by cumbrous machinery, and in some cases with great difficulty.

It is in fact to the convulsions of civil war that we owe one of the greatest revolutions in our jurisprudential system, not effected through the agency of parliament.

To the perfection of this system the courts of common law refused their aid. They looked upon the ostensible owner as the rightful owner, nor would they, as against him, yield any aid whatever to the beneficial owner. This latter was without remedy, as far as the law courts were concerned, and he was exposed to all the consequences which might ensue through the ill-conduct of the owner of the fee. He

had nothing to depend on but the legal owner's probity. If we may credit one authority, he ran but little risk. "I have seen divers ancient deeds of use," says Mr. Justice Manwood,* "and in ancient times you shall not find that any would purchase lands to himself alone, but had two or three joint feoffees with him, and he that was first named in the charter of feoffment was cestuique use, although that no use was declared to him upon the livery; and so it was known by the occupation of the lands. And the reason why no mention is made in our ancient books of uses, *is because men were then of better consciences that now they are;* so as the feoffees did not give occasion to their feoffors to bring subpœnas to compel them to perform the trusts reposed in them." The writ of subpoena, by which the court of Chancery was enabled to compel the legal owner to perform the uses on which he held his land, is said to have been invented during the latter part of the reign of Edward III, by a Sir John de Waltham, who held some inferior office in the Court of Chancery, and who, in the time of Richard II, became successively Master of the Rolls and Chancellor; and was afterwards raised to the see of Salisbury. This writ, it would seem, was used for the purpose of enabling the Chancery to usurp the functions of the other Courts of Westminster Hall, and provoked the complaints of the Commons,‡ who denounced it as illegal and oppressive.

* Brent's Case, 2 Leon 15. †Rot. Parl. 3 Hen. V.

‡ The 17th Richard II, cap. vi, gives a power to the Chancellor of awarding damages against any one who should obtain a subpœna by false statement, By the 15th Henry VI, c. iv,

The protection thus afforded to the costuique use, had an immediate effect in increasing the number of feoffments to uses. Sir Robert Atkyns, *in arguendo*,* says of uses and trusts, "they have the same parents—Fraud and Fear; and the same nurse—a Court of Conscience." Without, indeed, the Court of Chancery had taken uses under its protection, we may fairly presume that they would never have become permanently implanted in our law of real property. Under its careful and provident superintendance the great innovation flourished greatly, and increased the power of the Court by enlarging its jurisdiction and multiplying its business. Sir Edward Coke, in a speech which he delivered in the House of Commons, in 1621, tells us that in the reign of Henry VI, not more than 400 subpœnas were, on an average, issued out of Chancery; but that in the reign of James I, the yearly average was not less than 35,000! The bar of the court seems proportionably to have increased; for we learn from Bishop Hacket, the biographer of our last ecclesiastical Chancellor, that the Chancery was attended by fifteen serjeants or lawyers of the greatest eminence. Lord Bacon, in a letter which he addressed to the House of Lords, declares that he usually made two thousand decrees and orders in a year.

With all the benefits which they produced, conveyances to uses were the source of much mischief and the occasion of much fraud. Persons, possessed only of a limited interest in property, being tenants for

is enacted that no one shall sue a subpœna until he had found surety to satisfy the defendant his damages, if he should not verify his bill.

* Attorney-general v. Sir George Sands. Hardres. 491.

life or for years, would convey their interests to others for their own use, and committed waste with perfect impunity; the reversioner, or person next entitled, being ignorant against whom to bring his action. This was remedied by the 2 Henry VI, c. 5. They contributed, without doubt, to swelling the ranks of rebellious factions. When the penalty of treason may be evaded, we may expect that traitors will increase. This was found to be the case in Ireland, in the reign of Edward II, in consequence of which the Irish parliament passed an act (Stat. Kilkenny, 3 Edward II, c. 4,) which rendered void conveyances made for the purpose of enabling landed proprietors to commit treason, or other crimes with impunity,

The greatest disadvantage remains yet to be mentioned. The statute of Richard III, chap. 3, recites, "That by privy and unknown feoffments great unsurety, trouble, costs, and grievous vexations daily grow betwixt the king's subjects; insomuch that no man that buyeth any lands, tenements, rents, services or other hereditaments, nor the last will of men to be performed, nor leases for term of life or years nor annuities granted to any person or persons, &c. be in perfect surety, nor without great trouble and doubt of the same, by reason of such privie and secret feoffments." The remedy provided by the act was the bestowal, on the *beneficial* owner of the right of aliening, not only the use but the possession. Still the remedy was inadequate to the evil; for the right of the legal owners to alien was not taken away. In fact it was no unusual occurrence for those in whom only the bare legal right resided to dispose of the estate: and if the cestuique use had not exercised the power of alienation given him by this act,

and if the purchasers had received no notice of the uses, subject to which the seller had held the estate, the cestuique use lost his property without the possibility of recovery. After the passing of the act of Richard II, the beneficial and legal owners, by making different dispositions of the property, would sell it twice over—deceiving purchasers, and enriching themselves.

For the remedy of these evils, which loudly called for legislative interference, was enacted that famous statute which, whatever might have been its intention, has effected a most striking and important change in the system of our jurisprudence, the Statute of Uses, (27 Hen. VIII, c. 10.)

The motive of the framers of this important measure has been variously stated. According to Sir Edward Coke, they believed, "that uses were so subtle and perverse, that they could by no policy or provision be governed or reformed; and therefore, as a skilful gardener will not cut away the leaves of weeds, but extirpate them by the roots; and as a wise householder will not cover or stir up the fire which is secretly kindled in his own house, but utterly put it out; so the makers of the said statute did not intend to provide a remedy and reformation, by the continuance or preservation, but by the *extinction* and *extirpation* of uses: and because uses were so subtle and ungovernable, as hath been said, they have with an indissoluble knot coupled and married them to the land, which, of all the elements, is the most ponderous and immovable." Lord Bacon, however, in his admirable reading on the statute, asserts, "that the statute did not intend to abolish uses, but only to regulate them, by removing the abuses to which they

had become subject." It is difficult, however, to agree to this opinion (in which, however, a very learned writer, Mr. Sanders, has concurred), if the preamble of the act* is to be taken as recording the intentions of its authors.

The point is one of mere historical interest, and scarcely of such importance as to deserve discussion, even if it admitted of determination. If the intention of the statute had been to destroy uses, the strict construction which the judges put upon its language would have entirely prevented that intention's being effectuated. The act declares, that, where any person is seised of lands to the use of another, such person as shall have such use shall be deemed seised of the same lands in the same way as they were seised of the use. This act provides for a case in which there were only two persons concerned—a feoffee to uses, and a cestui que trust; but it did not provide for a case in which a conveyance should be made to one person for the use of another, for the use of a third. It was held, therefore, that the statute operated upon such a transaction as this, simply in transferring at once the legal estate to the first person for whom the use was declared, and stopped there without affecting the third person in whom the use would still remain. All, therefore, that was required to prevent the abolition of uses under the statute, was to create two trust estates instead of one; "and by this means," says Lord Hardwicke,† "a statute made upon great con-

* In this, the loss of forfeitures, &c., which the king and other lords had incurred, was especially dwelt upon. When the Earl of Sussex was appointed to the Irish government, one of his instructions was to introduce a statute of uses.

† Davenport v. Oloys, 1 Atk. 591.

sideration, introduced in a solemn, pompous manner, hath had no other effect than to add, at most, three words to a conveyance."

There is something of exaggeration in this. Whether or not the statute effectuated the intentions of its framers, it was not an impotent piece of legislation—seeing, to borrow the language of an excellent writer, that it operated to communicate to the "legal ownership all the flexible and popular qualities of the use;"* for, in the words of a learned judge,† "the course of the statute is to bring possession to the use," and not, as the title of the statute might lead us to infer, to impose on the use the fetters to which the feudal law had, in its barbarous, though not imprudent policy, subjected the possession.

In order to produce that notoriety of transfer, which the legislature appeared to think so highly desirable, the statute of uses was followed by another enactment, familiar to the lawyer as the Statute of Inrolments, the effect of which was to excite the ingenuity of lawyers, and add another form of instrument to those which were previously in use. Before the passing the statute of uses, a mere contract or agreement for sale made in consideration of money or other valuables paid to the seller, was sufficient to transfer the use; for as the law did not recognise the use, none of those solemnities the law recognised for the transfer of property were necessary. After passing of the act, wills were conveyed in this way, and the act of course bringing the possession to the use, transferred

* Hayes's Introduction to Conveyancing.

† Judge Walmesley. Bacon's Reading on the Statute of Uses.

the possession as completely as if all the legal requisitions had been complied with. To prevent this, an act was passed (27 Hen. VIII, c. 16), by which every such contract (which went by the name of bargain and sale) was declared, as to *freehold* property, void, unless it was made by a writing, sealed and enrolled, within a certain period after its execution, in the court of chancery. The operation of this act being restricted to *freehold* interests, did not extend to *terms for years.* A contract, therefore, for the sale of the beneficial interest in a term for years, without enrolment, was still valid. A custom then arose of contracting, for a mere nominal consideration, to sell the *use* of land for one year, and the purchaser had immediately the possession transferred to him by the statute; and then the seller, in whom the inheritance remained, had only to execute an instrument, well known to the ancient law as a release, by which he relinquished all his interest in the land, and the transaction was completed, without the notoriety the legislature so ardently sought to enforce. This is the origin of that instrument so well known as a lease and release; and which we are told by Fabian Philips, to have been "at first only purposely contrived by Francis Moore, at the request of the Lord Norris, to the end that such of his kindred or relations should not take notice, by any search of public records, what conveyance or settlement he should make of his estate."

There are other instances besides that afforded by the history of the statute of uses, in which the judges, overstepping in something their jurisdiction, and exceeding, without doubt, those limited powers vested in them by the constitution, have secured the people from the injurious effects of impolitic legislation. To the

power of a haughty and predominant aristocracy, may be ascribed that famous statute, not unaptly designated "the statute of great men"—for its whole operation is in favor of the great—so well known as the statute De Donis (13 Edward I.) The intention of this act was to favor those strict entails by which the nobility sought to perpetuate their power. It declared that where land was given in tail, the form of the gift and the purpose of the giver ought to be observed. Had the intention of this act been effected, nothing could have saved this country from oligarchic dominion, excepting the energy and policy of a sovereign who would have resorted to those violent means by which Louis XIV tamed the spirits and broke the power of the great feudatories of France.—The wisdom of our judges rendered this unnecessary. In the twelfth year of the reign of Edward IV, was determined the famous case known as Taltarum's case, in which the operation of common recoveries, in barring (as it is technically called) an estate in tail, was first distinctly recognised. It has been supposed that this case "was brought on the stage" by "that wise prince, Edward the Fourth," who, "seeing the great effusion of blood in the unhappy disputes between the Houses of York and Lancaster, and finding that though he used the extremity of law against the opposite party by attainting them of high treason, yet their estates were protected in the sanctuary of entails, and the son who succeeded to the father, generally inherited his principles and party as well as estate."* Common recoveries were of still more ancient date, and were derived, by ecclesiastical cunning, to evade

* Pigott. Treatise of Common Recoveries.

the statutes of mortmain. It is well known that this mode of assurance assumed the form of an action at law. The party purchasing, pretending to be entitled to the land in question, sued out his writ against the seller, who came into court, and, instead of defending his title, called upon some person who it was feigned had originally warranted the title to him, to appear and defend the title attacked, or to give him land of equal value. On this, the person so called on (usually denominated the voucher), appeared to the action, and the seller (demandant) intreated the permission ef the court for a private conference with the grantee, which was never denied. Shortly after this, the demandant returned into court, while the voucher disappeared; on which the court, presuming the title of the demandant good, immediately gave judgment in his favor. This mode of assurance has been, by a late act of parliament, abolished.

We have mentioned these instances, in which the authority of the Judges has been placed in opposition to the authority of parliament, for the purpose of giving the non-professional reader something like an idea of the discordant materials of which our law is composed; and the difficulties in which, from this circumstance, those who are called on to administer that law have to contend.

There is no branch of our jurisprudence which tasks in a greater degree the learning and ingenuity of the practitioner, than conveyancing. There is none in which solid acquirements are more evidently necessary, and the want of them would be more speedily detected. Patient labor, untiring research, prosecuted in the retirement of the closet, away from the excitement of the forensic forum, which endows the advo-

cate with powers which he does not usually display—this is the path of the conveyancer. He is required to be a profound lawyer; none but such can possess what Sir William Blackstone calls "a sort of legal apprehension," which will enable him to discover the points of difficulty which the deduction of a title may present. He must be something besides a lawyer; his knowledge must not be confined to the circle of mere professional information. Called on to advise not only what is *legal*, that is, in conformity with law, but also what, under the circumstances of the case, is most prudent and desirable, and often most *fair*—the transactions of business, the ordinary affairs of life, and the character of men, must be familiar to him. For not only is his counsel solicited on the simple point—is a certain line of conduct, or a certain disposition of property, in conformity with the requisitions of law? but the question is often put—out of different courses, none of them prohibited by the law—which course will effectuate, at the least cost (of money, of time, or otherwise,) the intentions of a party? The complicated and ramifying system of our commerce—the highly artificial state of society, its natural and forseen result—the multiplied and multiplying interest, ensued and ensuing the progress of a refined civilisation; to these circumstances do we owe the division of labor which is evident in every pursuit. Thus have the functions of the counsel, who advises on the rights of persons to property, become separated from the duties of the advocate, whose duty it is to solicit the protection of the tribunals, in defence of those rights, whenever they are invaded or threatened.

It was declared in the House of Commons, by Mr.

(now Justice) Williams, well known to have had considerable practice in the common law courts, that there were not more than six persons who could be considered as acquainted with the law of real property: and it was at one time asserted, that there was none practising at the bar of the Court of Chancery, with the exception of Sir Edward Sugden.

In former times, when the practice of conveyancing and the courts had not acquired the refinement and subtlety that it has now obtained, many of the most eminent practitioners in Westminster Hall were celebrated as conveyancers. In addition to those of whom we have already spoken, we may mention Mr. Serjeant Maynard, Sir F. Levinz, and the well-known Sir William Scroggs,* whose violence and slavish obedience to a corrupt court have rendered his name detestable.

* "He was a man that lay too open; his course of life was slanderous, and his discourse violent and intemperate. His talent was wit, and he was master of sagacity and boldness enough; for the setting off of which his person was large and his visage broad. He had a fluent expression, and many good turns of thought and language. But he could not avoid extremities; if he did ill. it was extremely so; and if well, in extreme also." Such is the character which is given of Lord Chief Justice Scroggs, by Roger North in his Examen. He appears to have been like almost all the public men of his time, utterly unprincipled. "In the [Popish] plot he was violent to insanity; and then, receiving intelligence of a truer interest at court, he was converted, and became all at once no less violent the other way." The method of this conversion is thus stated. The lord Chief Justice once came from Windsor with a lord of the privy council, in his coach; and amongst the discourse, Scroggs asked that lord, if the Lord Shaftesbury (who was then President of the Council,) had really that interest with the king as he seemed to have? 'No,' replied that lord,' 'no more than your footman has with you.' " Shaftesbury was, if not father, at least foster father, of the plot.

Lord Keeper Guilford is said to have been a good conveyancer; and to have been much employed by many noble families in the settlement of their property. "At the beginning of his business," says his brother, "he had no clerk, and not only drew but *engrossed* instruments himself; and, when he was in full practice, he scrupled not to write anything himself. A lady in Norfolk told me he made up some agreements for her; and at the sealing a bond was wanted, and there was no attorney or clerk at hand to draw it, so they were at a stand: and then he took the pen, and said, 'I think it will not foul my fingers if I do it myself;' and thereupon he made the bond, and it was sealed. I have often heard him complain of the community of conveyancers, and say, that some of them were pack-horses, and could not go out of their road." When North had obtained a considerable practice in court, "he only superintended in the conveyancing department; leaving researches, perusals and extract making to others, that he thought fit to recommend, and, after he had directed, took the finishing to himself. "These assistants appear to have been barristers, as amongst them we find the name of Siderfin, the reporter.

Wood says, that the famous John Selden "seldom or never appeared at the bar, but sometimes gave chamber counsel, and was good at conveyancing."

A gentleman once observed to an eminent lawyer, that Buchan's Domestic Medicine was a good book, for it enabled every man to be his own physician. "How far this may be," said the lawyer, "I cannot tell; but in reference to my own profession, this I will say, that every man that is his own lawyer has a fool for a client." It is very probable that this gentleman

ascribed the lawyer's reply to a friendly feeling towards the brethren of the pestle and mortar, just as the advice so often given by legal writers, that in matters likely to become the subject of litigation, legal counsel should be early sought, has been ascribed to a selfish desire of gain. The statistics of litigation will, however, fully establish the wisdom of such advice, and display the folly of those by whom it has been neglected. One of the chief reasons that the court is less frequently called on to construe deeds than wills, is because it is .genrally understood that a deed is a formal instrument of technical phraseology, and to be prepared, therefore, only by professional persons; whereas a notion pervades the minds of a large number, especially of uneducated people (as we can from personal observation assert), that a will is an instrument requiring no technical knowledge whatever to prepare, and that for its preparation the village schoolmaster is as capable as the practised lawyer. The vast number of will-cases which are yearly brought under the notice of the court, is the best refutation of this dangerous error. There is nothing, in fact, in which the conveyancer can better display his professional tact, knowledge and experience, than in the preparation of instruments of this kind; and there are few occasions in which he is more frequently baffled in his efforts and the intentions of his client are defeated. Wills that have been drawn by eminent judges, not practised in conveyancing, have been often set aside; and many instances could be mentioned in which lawyers who have greatly distinguished themselves for learning and ability have been unable to give effect to their intentions in the disposition of their property.

In reference to his skill as a conveyancer, Roger North relates of his brother the following anecdote:—"It fell out that his lordship, by a cast of his skill in this kind, prevented his father's being utterly disappointed of the effects intended by his last will; for the good lord had the general notions of the law, as many others have, who nevertheless, coming to the execution of business, blunder most abominably. So this good nobleman, intending to give his lady all his personal estate, free from debts and legacies, to charge those upon his lands (subject &c.) to settle it strictly upon his family, had contrived thus: He made his wife his executrix, and charged debts and legacies upon the land, and limited it especially on his sons and their issue male, successively, without trustees to support, &c. When this was done, he bethought himself, that, however in prudence it did not become him to trust his nimble young lawyer to draw his will, and so give him an opportunity to steal in somewhat for himself unawares to him, he ought not to secrete it from so great a lawyer as he was. And thereupon he sent for him, and with a speech let him know that however (for reasons that satisfied himself) he was not consulted in the making his will, yet now wished he should see it: but he must not expect to alter one title or syllable in it; for he had considered it so well that he should not need, if he were disposed to trust, his advice. His lordship perused it over, and his father asked him how he liked it. He answered with a question, whether that he intended that Lady North should have anything of his personal estate or nothing? 'I have intended her all; and have,' said he 'given it her by making her sole executrix,' That was his skill. But the lawyer told

him. 'that would not do but only in cases where no debts were: and charging his land did not ease his personal estate, unless it were made an express legacy, with a declaration to exempt it; for the heir had an equity to turn all debts upon the private estate in care of the land, and the latter should not be charged till the other was exhausted. This was news to the lord, and made him start. After this, he was surprised to learn the effects that would have ensued through his neglect to nominate trustees to support the contingent remainder. "So it is," sagely remarks the biographer, "when men will pursue a profession they were not educated in."

A great deal of conveyancing is now transacted in solicitors' offices, the superior education of that branch of the profession rendering them better qualified than formerly for this line of practice. By this means, however, the profits of conveyancing counsel have been as greatly reduced, as by the introduction of a less prolix and verbose style of conveyancing. This latter has been the source of much undeserved injury to the profession, and in a way which it is far more easy to lament than to remedy. That quantity should be the standard of value and test of remuneration, and that in proportion to the length of an instrument should be the fee of the counsel, inasmuch as it offers a direct premium upon prolixity and tediousness, we may fairly regret: but it is difficult to estimate correctly the degree of labor expended on any work, and we must make the best measure that we can. There are, indeed, in our day, more to share the gains of the labor; but still we think, looking to the increase of commerce, and consequently of litigation, which has been so remarkable in our time, and which has tried

so severely the efficiency of our tribunals, that the law is a profession undoubtedly less profitable, though much more difficult and expensive, than it was formerly—than in those days when Noy valued his bar-gown at £20,000.

"I have often, both in city and country, made as near an inquiry as possibly I could, in a general way, what number of lawyers there might be in England and Wales, in all offices; as judges, masters of chancery, serjeants at law, counsellors, attorneys, solicitors, with the rest of the rabble; and I cannot find by calculation, but that there are great and small, masters and servants (by the best account I can estimate) above thirty thousand. Now, consider at what high rates the very meanest of these live: see but a very country hackney, and you will find he goeth clothed in a genteel garb, and all his family; he keeps company with the gentry; and yet, usually, quickly getteth an estate over and above his expenses, which cannot possibly be less than £150 pounds per annum. Now, if such country lawyers live at that rate, bring the judges, masters of rolls, counsellors, attorneys, registers, *cum multis aliis*, in the common law, chancery, and admiralty; and you will find that this mercenary generation, one with another, do not receive less yearly from the people, in their law practice, (I say the number of thirty thousand,) than £250 *per annum* each man: what if some have but fifty, then know some have thousands; surely, I believe, that Prideaux and Maynard will not nor can deny it.—Now, at this rate, to say £250 *per annum* to each lawyer, these 30,000 receive seven millions and a half of money yearly, which is £7,500,000; and what a charge are people at to attend their tedious and vexa-

tious trials? Consider, what doth it cost to ride and go from all counties and towns to London, to attend the terms: it cannot be less than one million yearly, and to what purpose, observe." The author then goes on to enumerate the defects of the law.

If the writer had been at all acquainted with the degree in which many of these lawyers whom he so fiercely denounces, had prevented litigation, and, while relieving the courts from a weight which would otherwise have overwhelmed them, have prevented headstrong and ill-advised suitors from plunging into endless suits and vexatious proceedings, he would have been less bitter in his denunciations. Amongst those who have been the most instrumental to this result, the conveyancers certainly deserve the first place. Their chambers have been often, in effect, a domestic forum, where rival and contesting claims have been adjusted, and the necessity of an appeal to the tribunals of justice often obviated.

We do not know whether the following case, said to have been submitted to counsel, is genuine or not, but it is mentioned by Mr. Coventry, in his "Conveyancer's Evidence:" we can fancy how long aad protracted the arguments in court would have been.—The point was, whether a young lady, born on the night of the 4th of January 1805, *after the house-clock* had struck twelve, and *while the parish-clock* was striking, and *before* the clock of *St. Paul's* had struck, was born on the 4th or 5th of January. The opinion is stated to have been as follows:—"This is a case of great importance and some novelty; but I do not think I should be much assisted in deciding it, by reference to the ponderous folios under which my shelves groan. The nature of the testimony is to be

considered with reference to the subject to which it is applicable. The testimony of the house-clock is, I think, applicable only to domestic, mostly culinary purposes. It is the guide of the cook with reference to the dinner hour, but it cannot be received as evidence of the birth of a child. The clock at the next house goes slower or faster, and a child born at the next house the same moment, may, according to the clock at the next house, be born on a different day—the reception of such evidence would lead to thousands of inconveniences and inconsistencies. The parochial clock is much better evidence; and I should think it ought to be received if there were no better: but it is not to be put in competition with the metropolitan clock: where that is present it is to be received with implicit acquiescence—it speaks in a tone of authority, and it is unquestionably of great weight. I am, therefore, of opinion, that Miss Emma G—— was born on the 4th of January, 1805, and that she will attain her majority the instant St. Paul's clock strikes twelve on the night of the 3d January, 1826."

In the perusal of abstracts of title—a very important duty which devolves on the conveyancing counsel—he is called on to exercise his judgment, as well as his knowledge, in a very conspicuous manner. There is nothing which requires greater patience, and a greater variety of learning. Of all his functions, this we may expect will be the last of which innovation will deprive him.

We may form something like an estimate of the labor imposed on a counsel "advising on title," by the following directions, which are to be found in a work published in 1586, entituled, "Foure Bookes of Husbandrie, collected by Conradus Heresbachius.

Newly Englished and increased by Barnabe George, Esquire."

"OLDE ENGLISH RULES FOR PURCHASING LANDE.

"See that the lands be cleare.
In title o' the sellere,
And that it stand in dangere
And of no woman's dowrie;
If the tenure be bond or free,
Release of every feoffee.
See that the sellere be of age,
And that it lie not in mortgage:
Whether a taile be thereof founde,
And whether it be in statute bound;
Consider what service 'long'th thereto,
And what quit-rent there out must go;
And, if it come of a wedded woman,
Thinke thou well of 'covert baron;'
And if thou mayest in any wise
Make thy charter by warrantise,
To thee, thine heirs, assigns also:
Thus should a wise purchaser do."*

The task the purchaser is here reccommended to perform, is now discharged to his greater advantage in Lincoln's Inn.

* We find similar advice in Henry Phillipes's Purchaser's Pattern:—

"First, see the land which thou intend'st to buy,
Within the seller's title clear doth lie;
And that no woman to it doth lay claim,
By dowry-jointure, or some other name;
That it may cumber. Know if bond or free
The tenure stand, and that from each feoffee

Mr. Tyrrell (the eminent conveyancer) in his "Suggestions," published in the Appendix to the "Report of the Real Property Law Commissioners," observes, "That when new points have been frequently considered by several eminent counsel, who have concurred in the same opinion respecting the manner in which they ought to be decided, they are treated in practice as unquestionable, because the custom of conveyancers is regarded with great consideration by the different courts, and the house of lords, and they rarely refuse to confirm it." Lord Hardwicke, in Swannock *v.* Lifford (Co. Litt, 208 a. per Hargrave's note), cited the case of Lady Radner *v.* Rotheram, in which a decision of Lord Somers, reversing a decree of Lord Jeffreys, was confirmed

It be released. That the seller be so old,
That he may lawful sell, thou lawful hold.
Have special care that it not mortgaged be,
Nor be entailed on posterity:
That if it stand in statute, bound or no,
Be well advis'd what quit-rent out must go;
What custom-service hath been done of old,
By those who formerly the same did hold.
And if a wedded woman put to sale,
Deal not with her unless she bring her male,
For she doth under covert baron go;
Although sometimes some traffic see (you know).
Thy bargain being made, and all this done,
Take special care to make thy charter run
To thee, thine heirs, executors, assigns,
For that beyond thy life securely binds.
These things preknown and done, you may prevent
Those things rash buyers many time repent;
And yet, when as you have done all you can,
If you'll be sure, deal with an honest man."

solely on the ground that it was in conformity with the practice of conveyancers. In reference to the case before him, Lord Hardwicke observed, that in its decision, regard must be had "not only to the precedent of the court, but to the *practice* of conveying titles to estates, *upon which the precedents themselves were settled.*" "We hear of the practice of conveyancers," said Lord Eldon,* "and that amounts to a very considerable authority; and I am justified in that assertion by the opinions of the greatest men who have sat in Westminster Hall, who, I am persuaded, in many instances, if matters had been *res intregræ*, would have pronounced decisions very different from those which they thought proper to adopt, if they had not taken notice of the practice of conveyancers as authority." "The law has been as frequently decided," said Lord Redesdale, in the same case "even in the construction of acts of parliament upon what has been general construction of lawyers, as to the true intention of those acts of parliament." "How are you," he afterwards inquires, "otherwise to understand the intent of parties in a settlement, which really and truly is as much, I may say, the view which the person who prepared it has upon the subject, as the view of the parties; for the parties to a certain extent are ignorant of the words that are used, unless so far as they are advised by the persons whom they consult; and therefore the practice of conveyancers upon subjects of this description is, I conceive, a most important consideration; and wherever that has prevailed for a great length of time, without impeach-

* Smith v. the Earl of Jersey, 2 Brod. & B. 595.

ment in a court of justice, I take it, it ought to be considered as a true exposition of the law."*

When Lord Eldon declared that conveyancers had contributed "to settle a great deal of law," he stated no more than what is now notoriously true. We owe to them also the failure which followed many rash attempts to tamper with the principles of our law of real property, which have proceeded sometimes from soi-dissant philosophic jurists, who seek rather the semblance of perfection than its benefits, and sometimes from judges, who have allowed their individual notions of right and wrong to exercise greater influence over their judgment than legal considerations. The admirable work of Mr. Fearne is supposed to have contributed very materially to procure the reversal of the decision of the Court of King's Bench, in the well-known case of Perrin v. Blake, which, if it had been confirmed, would have introduced a most dangerous laxity in the construction of wills. To this instance we may add that of Sir Edward Sugden (originally a conveyancer) who first directed the attention of the professional public to the case of Doe dem. Putland *v.* Helder (2 Barn. & Ald. 782).

With all their acknowledged utility, and the important influence they have so beneficially exercised, the conveyancers have no public honors to look forward

* "Whatever other people may say upon the subject, I think that the practice of conveyancers has settled a great deal of law. * * * I put this case on the practice of conveyancers; and after the abuse which I have heard, at the bar of the House of Lords and elsewhere, upon that subject, I am not sorry to have this opportunity of stating my opinion that great weight should be given to that practice."—Per Lord Eldon, Howard v. Ducane Russ. & Furn. 80.

to. They never reach the bench; the great seal is never the hope of the boldest among them, who would probably be sufficiently surprised at his good fortune if a silk gown became the reward of his labors. The nature of their pursuits, however, render such honors to them almost valueless, and certainly, do not render them qualified for their attainment.

Some of the decisions in reference to the law of real property appear, at first sight, strange enough. The following are well known:

There is a case (Townley *v.* Bedwell, 6 Vesey 194) in which Lord Chancellor Eldon, held that the trust of real and personal estate by will, for the purpose of establishing a botanical garden, was void, for a rather singular reason, as it appears in the report, viz. because the testator expressed that he trusted it would be a public benefit! The Solicitor-general, Sir William Grant and Mr. Romilly, compared it to the case of a gift of a piece of land for the purpose of erecting monuments of the naval victories of this country. The Lord Chancellor said, in that case the heir might pull them down, and in this he might destroy the garden; but his lordship thought, upon the expression of the testator that "he trusted it would be a public benefit, he might venture to declare it void." The reason was, of course, that it was within the statutes of mortmain. In the case of Isaac *v.* Gompertz, cited 7 Ves. 61, Lord Thurlow declared an annuity given for the support and maintenance of the Jewish Synagogue in Magpie Alley to be void, a highly proper decree. A similar fate was awarded to a bequest for the dissemination of Baxter's Call to the Unconverted, 7 Ves. 52. Swinburne, part iv. sec. 6, art. 2, mentions a bequest of legacy to a per-

son, on condition of his drinking up all the water in the sea; and it was held that, as this condition could not be performed, it was void.

With the following observations, on the lengthiness complained of in the productions of the conveyancer, we shall close this chapter:—

"The length of legal instruments," says Mr. Butler, "is often owing to the necessity of providing for a multiplicity of contingent events, each of which may happen, and must, therefore, be both fully described and fully provided for. Of the nature and extent of this multiplicity, the party himself is seldom aware: sometimes even his professional adviser does not feel it, until he begins to frame the necessary clauses. A gentleman, upon whose will the reminiscent was consulted, had six estates of unequal value, and wished to settle one on each of his sons and his male issue, with successive limitations over the other sons, and their respective male issue, in the ordinary mode of strict settlement; and with a provision, that in the event of the death and failure of issue male of any of the sons, the estate devised to him should shift from him and his issue male to the next taker and his issue male; and, failing these, to the persons claiming under the other limitation, with a further proviso that such next taker's estate should then shift, in like manner, to the taker next after him, and the persons claiming under the other limitations. It was considered, at first, that this might be effected by one proviso; then, by two; and, then, by six: but upon a full investigation it was found that it required as many provisos as there can be combinations of the number six; now $1 \times 2 \times 3 \times 4 \times 5 \times 6 = 720$; consequently, to give complete effect to the intention of

the testator, 720 provisos are necessary. By a similar calculation, if a deed, which the reminiscent was instructed to prepare, had been executed, the expense of the necessary stamps would have amounted to ninety millions, seven hundred and twenty-two thousand pounds. Ten persons, each of whom was posssessed of landed property, having engaged in a mining adventure, a deed of partnership was to be prepared, which was to contain a stipulation that if any one or more of the intended partners should advance money to any other or others of them, the money lent should be a charge, in the nature of a mortgage, upon the share or respective shares of the borrower or respective borrowers, and overreach all subsequent charges, and therefore the charges were to be considered as mortgages actually made by the deed. Thus, in the contemplation of equity, the estate was actually to be subjected by the deed to as many possible mortgages as there can be combinations of the number 10. Each of these possible mortgages being for an indefinite sum would require the £25 stamp. Now $25 \times 2 \times 3 \times 4 \times 5 \times 6 \times 7 \times 8 \times 9 \times 10 = 90{,}720{,}000$.

# CHAPTER VII.

## MORALITY OF LAW AND LAWYERS.

Mr. Dymond on legal prostitution—Lords Erskine and Brougham, Mr. Coleridge and Dr. Johnson, on the Duties of an Advocate—Roman Law—a Defence of Advocacy—the Art of Obtaining a Verdict—the Eloquence of Truth, or Jack Lee and the Wooden Leg—Lord Brougham's powers of Animal Magnetism—Boswell and Johnson on Legal Morality—Dr. Garth's satire on the Legal Profession—Milton's Character of a Lawyer—Wilkes *v.* Sir F. Norton—what Attorneys are done with when they die—a Family Chancery Suit—Singular Trial—Judge Buller—Curiosities of the Law—Singular Wager—Law of Betting—a man hanged for cutting down trees--Anomalous State of the Law of Libel, illustrated by curious cases.

FROM a manuscript in the Harleian collection, we learn that, in Queen Elizabeth's time, "it is reported that there was but one serjeant at the common pleas bar (called Serjeant Benlowes), who was ordered to plead both for the plaintiff and defendant, for which he was to take of each party ten groats only, and no more; and to manifest his impartial dealing to both parties, he was, therefore, to wear a parti-colored gown, and to have a black cap on his head, of imperial justice, and under it a white linen coyfe, of innocence."* This, if we do not greatly mistake, is an

* Within the last twenty years there was only one Barrister practising at the Ely sessions, and he used to argue both sides.

instance extreme in degree, but similar in kind to that custom in which a certain class of writers and thinkers have deemed the immorality of the legal profession mainly to consist. "When a barrister," says Mr. Dymond, "arrives at an assize town on the circuit, and tacitly publishes that (abating a few and only a few cases) he is willing to take the brief of any client; that he is ready to employ his abilities, his ingenuity, that any given cause is good, or that it is bad; and when, having gone before a jury, he urges the side on which he happens to have been employed with all the earnestness of seeming integrity and truth, and devotes the faculties God has given him, in promotion of its success—when we see all this, and remember that it was the toss of a die whether he should have done exactly the contrary, I think that no expression characterises the procedure but that of *intellectual and moral prostitution.*" "I confess I have imbibed an opinion," says Mr. Benjamin D'Israeli, "that it is the duty a counsel owes his client to *adjust* him by all possible means, just or unjust, and even to commit a crime for his assistance or extrication."

On the duties of an advocate, great advocates have spoken out. "If the advocate," said Erskine, on a memorable occasion,* "refuses to defend, from what he may think of the charge or the defence, he assumes the character of a judge: nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation puts the heavy weight of, perhaps, a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of the English law makes all favorable presumptions, and which

* His defence of Tom Paine.

commands the very judge to be his counsel." Addressing the house of lords in defence of a royal client, Mr. Brougham said, "I once before took leave to remind your lordships—which was unnecessary, but there are many whom it may be needful to remind—that an advocate, by the sacred duty of his connection with his client, knows, in the discharge of that office, but one person in the world—that client, and no other. To save that client by all expedient means, to protect that client at all hazards and cost to others, and, among others, to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any others; nay, separating even the duties of a patriot from those of an advocate, he must go on reckless of the consequences, if his fate should unhappily be to involve his country in confusion for his client."

Mr. Coleridge, whose views in ethical questions were especially enlarged and liberal, did not altogether concur in these assertions. "There is, undoubtedly," he says, "a limit to the exertions of an advocate for his client. He has a right—it is his bounden duty—to do every thing for his client, that his client might honestly do for himself,* and to do it with all the effect which any exercise of skill, talent, or knowledge of his own may be able to produce. But the advocate has no right, nor is it his duty, to do that for his client, which his client *in foro conscientiæ*, has no right to do for himself; as, for a gross example, to put in evidence a forged deed or will, knowing it to

* "A lawyer is to do for his client, all that his client might fairly do for himself if he could." Dr. Johnson.

be so forged." He further remarks, that "it is of the utmost importance, in the administration of justice, that knowledge and intellectual power should be as far as p ssible equalised between the crown and the prisoner, or plaintiff and defendant. Hence especially arises the necessity for an order of advocates, whose duty it ought to be to know what the law allows or disallows; but whose interests should be wholly indifferent as to the persons or characters of their clients." "Sir," said Dr. Johnson to Sir William Forbes, "a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly: the justice, or injustice, of the cause is to be decided by the judge. Consider, sir, what is the purpose of courts of justice—it is that every man may have his cause fairly tried by men appointed to try causes. A lawyer is not to tell what he knows to be a lie—he is not to produce what he knows to be a false deed—but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence, what shall be the result of legal argument. If," he soon after observed, "by a superiority of attention, of knowledge, of skill and a better method of communication, a lawyer hath the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage on one side or the other, and it is better that that advantage should be by talents than by chance."

Every advocate by the Roman law, was compelled to swear that he would under no circumstances defend a cause which he knew to be unjust, and that he would desist from prosecuting a claim which

rested upon evidence that was false. The Scottish advocate is ordered, by a statute of James I of Scotland to take the following oath:

> "Illud juretur, quod lis sibi justa videtur,
> Et si quæretur, verum non inficietur;
> Nil promittetur, nec falsa probatio detur,
> Ut lis tardetur, dilatro nulla petetur."

In Holland, even at the present time, we understand that an advocate who appears in a proceeding which, in the view of the court, is iniquitous, may be condemned in the costs of the suit. No instance has, however, occurred for many years, in which the court has thus enforced its authority in this particular.

From the serjeants' oath, we may gather what, in ancient times, the law of England considered to be the appropriate duty of the advocate; it is as follows:—"That you shall swear that well and truly you shall serve the king's people as one of the serjeants at law, and you shall truly counsel them, that you shall be retained with, after your cunning, and you shall not defer, hurt, or delay their causes, willing for love of money or covetous of any thing that may turn to your profit; and you shall give attendance according as God you help." By the 3d Edw. I, stat. 1, Westm. c. 29, it is enacted, that if any serjeant, counter, or any other, do any manner of deceit in the king's court, or consent unto it, in deceit of the court, or to beguile the court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man.

By a previous act (the Statute of Marlebridge, 52 Hen. III, c. 11), a fine is imposed for bad plead-

ing (pro stultiloqutio). In his second Institute (p. 122), Sir Edward Coke expresses his opinion that the client, and not the pleader, paid the fine; but in his Book of Entries, where he enters more at large into the subject, he acknowledges, as every one must see, that, by the intention of the statute, the fine was payable by the pleader. In the reign of Edward III, addressing the bar (*septum curiæ*), Robert de Willoughby, a judge of the King's Bench, said in the barbarous language of the times, "I have seen the time, when if you had pleaded an erroneous plea, you would have been taken to prison."* "Littleton and Corke," says Coke, "were entreated to save a defendant in a real action on this plea—that, by the greatness of the waters, their client could not pass for sixteen days. They, holding this to be untrue, refused to plead it."

From this it will appear, that there is a limit to the exertions of the advocate; for we may fairly conclude, from these enactments, that the law does not hold the assertion of falsehood included within his duties. This limitation, however, would not satisfy either Mr. Dymond or Mr. D'Israeli. That an advocate should appear in defence or in prosecution of a claim, he believes to be unjust—that he should endeavor to persuade the court that the guilty are innocent, and the innocent are guilty—form, in their opinion, the true objection to the system.

The defence of the *system* is to be found in the fact, that *it works well;* that it produces the ends for which tribunals and advocates exist; that it produces

* "*Jeo ay view le temps que si vous assez* plead an erroneous plea, *que vous alastes al prison.*"

these ends with more certainty and expedition than they could in any other way be attained; and that it tends to check in a very perceptible manner, that spirit of unceasing litigation, of which the *acquisitive* views of mankind, is the constant and fruitful source. The advocate stands forward as the representative of his client; he tells his client's story, and it is known that he is doing no more. The same allowance is made for every thing he says, that would be made were the party himself the pleader: the facts he states are understood to be such as the client would have stated, and to be stated as he would have done.

Thus the inequalities in tact, in knowledge, and in experience, which might exist between the parties to the proceeding, have not the injurious effects which they would have, did they plead their own cause. "Justice," says Sydney Smith, "is found experimentally to be the best promoted by the opposite efforts of practised and ingenious men, presenting to the selection of an impartial judge the best arguments for the establishment and explanation of truth. It becomes, then, under such an arrangement, the decided duty of an advocate to use all the arguments in his power, to defend the cause he has adopted, and to leave the effects of those arguments to the judgment of others." If a counsel were to refuse to appear on behalf of any one, because *he* considered him to be wrong, he would assume the office of the judge, without possessing the power of the judge to ascertain the whole truth, and thus an innocent individual might suffer. "There were cases brought to Sir Mathew Hale, which, by the ignorance of the party or their attorney, were so ill

represented to him, that they seemed to be very bad; but he, inquiring more narrowly into them, found they were really very good and just. So after this he slackened much of his former strictness, of refusing to meddle on causes upon the ill circumstances that appeared in them at first." Hale was fortunate in discovering the justice of his client's cause; often the advocate is unable to do so until the cause is fairly before the court. It may also be observed that it is often doubtful *in what degree* a party is in error—a fact not to be ascertained until the trial. Thus a person guilty indeed, but not so guilty as at first appears, might suffer to an unjust extent through the mistaken view the advocate might take of his duty.

Looking to society, we unhesitatingly assert it to be most highly desirable that the advocate should not be called on to consider whether his client be morally guilty or no; but that he should be bound to state, as forcibly as he can, the best arguments he can devise in his client's favor, leaving the value of these arguments, as well as the merits of the case, to be decided by the only individual who has the power of reaching the truth—the judge. It must be distinctly understood, that no advocate, in pleading for any one, attempts to prove more than this, that the *law* does not declare his client guilty—with moral guilt or innocence he has nothing whatever to do.

Plato, however, did not share in these opinions, and in his republic would not suffer them to be carried out in practice. Whoever should plead a cause, knowing it to be unjust, if it be proved he had done so through a contentious spirit, was to be forbidden practising again in the courts. But if, being a citizen,

he has done so through a desire of gaining money, he was to be punished with death.*

Laud relates, in his Diary, that one day, standing near the Prince of Wales, afterwards Charles I, the prince observed, that if he were compelled by necessity to earn his bread, he would not select the profession of a lawyer; "For," said he, "I can neither defend a bad cause, nor yield in a good one." "Sic in majoribus succedas et in æternum faustus," was the fervent wish expressed by the unfortunate prelate, while recording this expression of his master.

Very absurd consequences have sometimes followed the indifference with which our lawyers take any side of a cause, as the following anecdote will show. A case (King *v.* Turner, Vice Chancellor's Court, Jan. 26, 1829) was down on his honor's paper to be spoken to: Messrs. Horne and Pemberton were heard on one side: Mr. Sugden, following, concurred in the argument of his learned friend—"the law here was quite clear."

*V. C.* Then Mr. Sugden is with you, Mr. Horne.

Mr. Horne said that the argument of his learned friend was, to his great surprise, on his side; but his learned friend happened to be on the other. This excited great laughter in the court. Mr. Sugden who, after consulting with his junior (Mr. Jacob), seemed not a little disconcerted, said he had mistaken his side. What he had said, however, was said in all sincerity;

* De Legibus Lib. XI. et Opera. vol. viii, p. 575. Edit. Bekk. Lond. 1826. The passage is worth extracting which contains the proposed law. "Αν τις δοκῆ πειρασθαι τήν τῶν δικαίων δύναμιν ἐν ταῖς τῶν δικαστῶν ψυχαῖς ἐπὶ τἀναντια τρέπειν καὶ παρὰ καιρὸν πολυδικεῖν τῶν τοιούτων ἢ και ξυνδικεῖν, γραὶεσθω μὲν ὁ βουλόμενος αὐτὸν κακοδικίας ἢ κὰι ξυνδικίας κακῆς."

and he never would for any client, be he whom he may, argue against what he thought a settled rule of law. As his learned friends had differed on the present point, he hoped his honor would decide it without reference to what had fallen from him. The Vice-Chancellor promised he would do so.

In reference to the means often resorted to by advocates to obtain a verdict, Mr. Coleridge expresses opinions, which we find held but rarely out of the circle of the profession, nor always avowed by those in it. "As to the mere confounding a witness by skilful cross-examination," he says "I own I am not disposed to be very strict. The whole thing is perfectly well understood on all hands, and it is little more, in general, than a sort of cudgel-playing between the counsel and the witness, in which—I speak with submission to you—I think I have seen the witness have the best of it, as often as his assailant. "If," he adds, "a certain latitude in examining witnesses is, as experience seems to have shown, a necessary mean towards the attainment of the truth of matters of fact, I have no doubt, as a moralist, in saying that such latitude within the bounds now existing is justifiable. We must not be righteous overmuch, or wise overmuch; and as an old Father says, 'in what vein may there not be a plethora,' when the scripture tells us that there may, under circumstances, be too much of virtue and wisdom?" Perhaps there is nothing which has reflected so much deserved disgrace on the profession, and tended in a great degree to lower it in the estimation of the public, than the unworthy means which advocates have resorted to for the purpose of obtaining a verdict. Sometimes they have been foiled in a most ludicrous manner by some un-

happy *contre-temps* which has involved them in a position so strikingly absurd as that in which they desired to place their victim. Of this we have given some instances in another place. The following anecdote ought properly to have been inserted there.

On the Norfolk circuit, the famous Jack Lee was retained for the plaintiff in an action for breach of promise of marriage: when the brief was brought him, he inquired whether the lady for whose injury—spretæque injuria formæ—he was to seek redress was good-looking. "Very handsome, indeed, sir!" was the assurance of Helen's attorney. "Then, sir," replied Lee, "I beg you will request her to be in court, and in a place where she can be seen." The attorney promised compliance; and the lady, in accordance with Lee's wishes, took her seat in a conspicuous place. Lee, in addressing the jury, did not fail to insist with great warmth on the "abominable cruelty" which had been exercised towards "the lovely and confiding female" before them, and did not sit down until he had succeeded in working up their feelings to the desired point. The counsel on the other side, however, speedily broke the spell with which Lee had enchanted the jury, by observing, that his learned friend in describing the graces and beauty of the plaintiff had not mentioned the fact—that the lady had a *wooden leg!* The court was convulsed with laughter, while Lee, who was ignorant of this circumstance, looked aghast; and the jury, ashamed of the influence that mere eloquence had had upon them, returned a verdict for the defendant.

The effective manner in which Lord Brougham, when at the bar, used to terrify juries out of their verdicts, was most remarkable: it often, however,

failed of success. The most difficult of every species of advocacy, he was, perhaps, almost the only man of his day who could ever boast he had succeeded in it. It has been related of him, that once, at the Lent assizes at York, he sat for some time intently looking at a witness who was giving evidence, and whom he was to cross-examine. At last, the poor fellow, after several efforts to continue his replies, became so dreadfully alarmed, that he declared that "he could not say another word, unless that gentleman," pointing at Mr. Brougham, "would take his eyes off him."

Addressing the pleader, Bishop Sanderson* says, "Think not because thou speakest for thy fee, that therefore thy tongue is not thine own, but thou must speak what thy client would have thee speak, be it true or false; neither think, because thou hast the liberty of the court, and, perhaps, the favor of the judge, that therefore thy tongue is thine own, and thou mayest speak thy pleasure to the prejudice of the adversarie's person or cause. Seek not preposterously to win the name of a good lawyer by wresting and perverting good lawes, or the opinion of the best counsellor, by giving the worst and shrewdest counsel. Count it not, as Protagoras† did, the glory of your profession, by subtlity of wit and volubility of tongue, to make the worse the better; but,

* Sermons. *Ad Magistratum.* Serm. III, p. 132, Lond. 1661.

† "Is tamen Protagoras insincerus quidem philosophus, sed acerrimus sophistarum fuit; pecuniam quippe ingentem cum a discipulis acciperit annuam, pollicebatur se id docere quanum verborum industria causa infirmior fieret fortis. Quam rem Græce ita dicebat: τον ἥτω λόγον κρεἴτω ποιεῖν." Aul. Gellius, Noct. Att. lib. v, ch. 43.

like a good man, as well as a good orator, use the power of thy tongue and wit to shame impudence and protect innocency, to crush oppressours and succour the afflicted, to advance justice and equity, and to help them to right that suffer wrong. *Let it be as a ruled case to thee in all thy pleadings, not to speak in any cause to wrest judgment.*"

We have hitherto considered "the morality of advocacy," in reference to society; some observations on its effects on the individual will appear naturally to follow. Quintilian, in his Institutes of Oratory, declares that in his opinion, which, he says, is that of many moralists of acknowledged authority, the greater number of actions are moral or immoral, not so much, in themselves, as in the motives, which actuate men to their performance. Now, as it will be at once admitted, that the advocate who pleads a bad cause, does so not from any affection to the crime or the criminal, but with a belief, however erroneous, that he is discharging a duty which he owes to the community, it is difficult to see how his moral character could become in any way deteriorated.

"I asked him," says Boswell, speaking of Dr. Johnson, "whether, as a moralist, he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty.

*Johnson.* "Why no, sir, if you act properly. You are not to deceive your clients with false representations of your opinion: you are not to tell lies to a judge.

*Boswell.* "But what do you think of supporting a cause which you know to be bad?

*Johnson.* "Sir, you do not know it to be good or bad till the judge determines it. I have said that

you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself, may convince the judge to whom you urge it; and if it does convince him, why, then, sir, you are wrong, and he is right. It is his business to judge: and you are not to be confident in your own opinion, that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.

*Boswell.* "But, sir, does not affecting a warmth when yon have no warmth, and appearing to be clearly of one opinion, when you are, in reality, of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life, in the intercourse with his friends?

*Johnson.* "Why no, sir. Every body knows you are paid for affecting warmth for your client: and it is, therefore, properly no dissimulation; the moment you come from the bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble upon his hands, when he should walk on his feet."

On this subject Coleridge thought differently. "I think," said Coleridge,* "that, upon the whole, the advocate is placed in a position unfavorable to his moral being, and, indeed, to his intellect also, in its

* Table Talk, p. 5--7.

higher powers. Therefore I would recommend an advocate to devote a part of his leisure time to some study of the metaphysics of the mind, or metaphysics of theology; something, I mean, which shall call forth all his powers, and centre his wishes in the investigation of truth alone, without reference to a side to be supported. No studies give such a power of distinguishing as metaphysical; and in their natural and unperverted tendency they are ennobling and exalting. Some such studies are wanted to counteract the operation of legal studies and practice, which sharpen indeed, but, like a grinding-stone, narrow while they sharpen."

With such denunciations against the "advocacy system," we cannot wonder the profession should with a certain class, have been in bad odor.

"There is a proverb," says Nicius Erythæus, "that no man departs more from justice in affairs than a lawyer: no man observes less the regimen of health than a doctor: no man bears less the remorse of conscience than a divine." It is certainly not an agreeable thing to be told you are mad, but, when the lunatic, who charged his keeper with madness, declared that he himself was the only sane man in the world, he certainly made his accusation much easier of endurance. So, in like manner, when the lawyer is accused of despising by his conduct the precepts he is called on to enforce, and the divine and the physician are involved in the same censure, the weight of the censure is undoubtedly lightened. Dr. Garth says of our barristers,

"For fees to any form they mould a cause,
The worst has merits, and the best has flaws;

Five guineas make a criminal to day,
And ten, to-morrow, wipe the stain away."

Some wag has also satirised the consolations of an outwitted attorney—the tender consolations, the wound-healing comforts, of large bills of cost—in the following parody:

"Oh, think not your pleadings are really so sly,
And as free from a flaw as they seem to you now,
For believe a demurrer will certainly lie,
The return of to-morrow will quickly show how;
No, all is a waste of impertinent reading,
Which seldom produces but quibbles and broils,
And the lawyer who thinks he's the nicest in pleading,
Is the likeliest by far to be caught in its toils.
But brother attorney! how happy are we?
May we never meet worse in our pilgrimage here,
Than the flaw a demurrer can gild with a fee,
And the fee that a conscience can earn from a flaw."

"Some" says Milton, "are allured to the trade of law, grounding their purposes not on the prudent and heavy contemplation of justice and equity, which was never taught them, but on the promising and pleasing thoughts of litigious terms and fat fees."

Of the abstract character of a lawyer, a brilliant but superficial essayist thus writes—"His soul is in his fee—His understanding is on the town He will not swear to an untruth to get himself hanged, but he will assert it roundly by the hour together, to hang other persons, if he finds it in his retainer. What a tool in the hands of a minister is a whole profession habitually callous to the distinctions of right and wrong, but perfectly alive to their own interests; with just ingenuity enough to be able to trump up some fib or so-

phistry for or against any measure, and with just understanding enough to see no more of the real nature or consequences of any measure than suits their own or their employers' advantage."

The censure in which the profession has been involved by the ill conduct of some of its members—a censure propagated with other fooleries by the stage and circulating libraries, by the compiler of farces and the scribbler of novels—is now fast disappearing.—There are, however, some minds from which the ejection of prejudices is indeed a difficult task. Mr. Abernethy used to say that it was no use physicking some men; and most assuredly with some reasoning is as futile. In the eyes of folly and ignorance the physician who snatches their frames from disease, or the lawyer who rescues their property from destruction, may be viewed equally as rogues; but that those to whom Providence has not denied common sense should suppose such are rogues, because some may be found assuming their names who are nothing but quacks and petty-foggers, does indeed excite our astonishment.

The notorious Wilkes was fond of declaring that the name of a lawyer was but another name for a scoundrel. In arriving at this conclusion he was guilty of what logicians call imperfect induction; he deduced a general conclusion from scanty particulars. He once wanted to ruin the character of a female without incurring the risk of legal proceedings on the part of her family. He advised with Sir Fletcher Norton on the subject, by whom he was recommended to take the girl into his house nominally as an upper servant, and give her double wages, as extra wages would denote that she was expected to act in

a capacity other than that of an ordinary servant. If it be true that Sir Fletcher Norton gave any such advice, Wilkes would have been justified in despising him accordingly; but in no way would it justify him for extending his contempt to the whole profession.

There is more truth than people are apt to suppose in the maxim—that men are virtuous or vicious, as they are *considered* virtuous or vicious. The virtue of a large proportion of mankind—if mere abstinence from vice can merit the name of virtue—arises, simply, from a respect for public opinion, from a desire to obtain the regard and good-will of those amongst whom they move: once let them know that they are viewed with dislike, and you emancipate them from the chain which held them to virtue. To give a dog an ill name is only a step to hanging him.

We think, therefore, that the currency which has been given to libellous reflections on the character of the legal profession has had a tendency to produce the evils which these reflections reprobate; although the circulation has in many cases not been more prolonged than that of other lies of the day.

> "———— just buoyant on the flood,
> Then buried with the puppies in the mud."

The bad usage which has had no higher end in view than exciting a laugh, still may have been mischievous and hurtful. The following epigrams, in reference to the "Horse" and the "Lamb" which form the crests of the societies of the Temple, are certainly more laudable for wit than for good taste—

> "As by the Templars' haunts you go
> The *horse* and *lamb* display'd,

In emblematic figures show
The merits of their trade;

"That clients may infer from thence,
How just is their profession,
The *lamb* sets forth their innocence—
The *horse* their expedition.

"Oh, happy Britons! happy isle,
Let foreign nations say,
Where you get justice without guile,
And law without delay."

To charge "the law's delay" upon the lawyers, is about as just as it would be to ascribe the rapidity with which some medicines effect a cure to the wisdom and honesty of the physicians. To this epigram the following reply has been written—

"Deluded men! their holds forego,
Nor trust such cunning elves;
These artful emblems tend to show
Their clients not themselves.

"'Tis all a trick, these all are shams
By which they mean to cheat you,
But have a care!—for you're the lambs;
And they the wolves that eat you.

"Nor let the thought of no delay
To these their courts misguide you,
'Tis you're the showy-horse, and they
The jockeys that will ride you."

The following anecdote has been related by Foote, and will show, although in an exaggerated manner, the absurd prejudices which *at this moment* subsist against one branch of the profession. But for such

a prejudice, Foote would never have displayed his wit in this manner; and we do believe it is a prejudice which has not yet followed the belief in ghosts or the dread of witches. A gentleman in the country, who had just buried a relation, an attorney, complained to Foote of the great expenses of a country funeral. "Why, do you *bury* attorneys here?" gravely enquired Foote. "Yes, to be sure: how else?" "Oh we *never* do that in London." "No!" exclaimed the other, much surprised, "why how do you manage then?" "Why when the patient happens to die, we lay him out in a room over night by himself, lock the door, throw open the sash, and in the morning he is entirely off." "Indeed," said the gentleman amazed, "and pray what becomes of him?' "Why, that we cannot exactly tell, not being acquainted with supernatural causes. All that we *know* of the matter is, that there is a strong smell of brimstone in the room the next morning!"* Foote had an especial aversion to attorneys. One of this profession, certainly not remarkable for the integrity of his character, having a dispute with a bailiff, brought an action against him, which Foote recommended to be compromised. The parties agreed to do it, but differed

* At one of the ferries on the Po, on one occasion, every horse was readily induced to enter the ferry boat, except one, which stood obstinately on the bank, and refused to move; at length a passenger went up to the horse and whispered in his ear, on which the refractory beast suffered himself to be led into the boat. The ferryman begged to know the words which had brought about the change. The passenger replied, that he had said to him, "Sicome l'anima de cabtior cato va al casa del diavolo, cosi va tu sopra questo barca." "As the soul of a wicked lawyer that cheats his clients, goes to the house of the devil, so leap thou into this boat."

as to who should be arbitrator, and at length requested Foote to act in that capacity. "Oh! no!" said Foote, "I might be partial to one or other of you, but I tell you what, I'll do better—I'll recommend a thief, as a common friend to both."

There is no fact better authenticated than that respectable solicitors, most especially in the country, so far from promoting, positively impede, the tide of litigation. We say, most especially in the country, not as in any way desiring to reflect on the character of the London solicitors, who are in this respect by no means inferior to their provincial brethren, but from the circumstance that a litigious spirit is more prevalent among the dwellers in fields—the Dandie Dinmonts, and those of his class—than amongst the inhabitants of towns. An indisposition to sacrifice what they hold their rights is common to all mankind; but the litigiously-disposed will not yield their rights because they are their rights. It may be a barren inheritance for which they struggle, some

"———little patch of ground
That hath in it no profit but the name."

The process they know to be costly, but then their

"———spirits with divine ambition puff'd
Make mouths at the invisible event:"

and resolve

"Greatly to find quarrel in a straw,
When honor's at the stake.

Mr. Chitty mentions an anecdote which illustrates

this. An attorney, on the marriage of his son, gave him £500 and handed him over a Chancery suit, with some common law actions. About two years afterwards the son asked his father for more business. "Why I gave you that capital Chancery suit," replied the father, "and then you have got a great many new clients; what more can you want? "Yes sir," replied the son, "but I have *wound up* the Chancery suit, and given my client great satisfaction, and he is in possession of the estate." "What, you improvident fool," rejoined the father indignantly, "that suit was in my family for twenty-five years, and would have continued so as much longer, if I had kept it. I shall not encourage such a fellow." The sequel of the story is that the father died a few years afterwards in comparative poverty while the son continued to conduct his business honorably and uprightly for fifteen years, and has now retired to an estate which he purchased, and where he resides respected and esteemed by all who know him.

In former times, law-suits were neither less numerous or less prolonged than we find them to be in our own; and of this we have many evidences. Indeed of yore it was a favorite system pursued by the lawyers towards those who were in anywise obnoxious to them, to involve them in heavy law-suits.

From the Faston letters—a curious collection of letters written in the fourteenth century, and published by the late Sir John Fenn—we can discover the evidences of a most litigious spirit which seemed to pervade the upper classes of society at that time. Sir John Falstaff, whose name is familiar to us, as that of one of Shakspeare's happiest and most humorous characters, but who was in fact a most gallant and

distinguished warrior, appears from this correspondence to have occupied himself, during the retirement of his latter years, with bringing and defending actions. His whole mind, it is easy to see from the tone of his letters, was turned to legal subjects; and he appears to have displayed in the Courts, as bold and undaunted a spirit, as that which marked his military career.

Amongst the Harleian Collection,* there are to be found many ballads, satirizing the extortionate habits of the lawyers of ancient times; but few of them possess sufficient merit to recompense the trouble of transcription. One of the most remarkable satires against our old lawyers, is to be found in that strange allegorical poem called "Piers, Ploughman's Vision," written in the reign of Edward III. supposed to be by Langland, a secular priest. The following extract will show the spirit of the work:—

"Conscience and the kyng into the court wenten
Were hoved there an hundred in hoods of silke,
Serjauntes hii† semede, that serven at the barre,
To plede for penyes and pounds the lawe,
And not for our Lorde's love unloose their lyppe once!
How might bet mets‡ the mist on Malverne Hilles,
Than get a mom§ of their mouth till money be them shewid."

In another part of the same work we find the same sentiments expressed. Piers had obtained a bull of pardon for certain persons.

* Harl. MSS. No. 2553. 70 b.

† They. ‡ Be measured. § Single word. Pier's Plowman's Vision, Passus Primus. We have taken some liberties with the spelling and punctuation to render it more intelligible to the general reader.

"Men of lawe had lest,* that loth were to plede,
Bote thei *pre-manibus* were payed for pledyng at barre,
Ac he that spendeth his speche and spoketh for the poure,
That innocent and nudy† is, and no harm wolde,
And comforteth suche in eny cas, and coveyteth not their
geftes,
And for the love of oure Lorde, lawe for hem declareth,
Shal have grace of God ynow and a great joye after.
Beth yware ye wisemen and witty of the lawe,
For wen ye draweth to the deth and indulgence wolde have,
His pardon is full petit, at his partynge hennes,
That mede of mene men for their motyng taketh,
For hit is simonie to selle, that send is of grace,
That is witt and water, wynd and fuyer, the furthe,
These foure shoulde be fre to alle folke that hit needed."

It was without doubt for the purpose of checking the rapacity of the lawyers, who, grossly ignorant themselves, preyed on the ignorance of the people, that it was found necessary by the legislature to interfere.

Edward I directed John de Mettingham, then Lord Chief Justice of the Common Pleas, and the other judges of that court, to provide and ordain certain attorneys and lawyers, who should be "the most apt for their learning and skill," and "who might do service to his court and people." Those so chosen were to follow his court, and transact the affairs therein.—The king and his council considered that "sevenscore" were sufficient for the purpose, but left it to the discretion of the judges to appoint a greater or less number, as they might think proper. The different classes of persons mentioned as thenceforth following the law as a profession, were stated to be, servientes—narra-

* Least † Needy.

tores—attornati—et apprenticii. It is supposed that the apprenticii were students; at an after period they were practising barristers.

By the 33 Hen. VI, it was recited that there had formerly been only six or eight attorneys in the counties of Norfolk and Suffolk altogether, and that the number had increased to eighty,* the greatest part of whom incited the people to suits for small trespasses; for remedy of which it enacted, that there should be six for Suffolk, six for the county of Norfolk, and two for the city of Norwich. Ignorance also is imputed to this superfluity of attorneys, although Mr. Barrington says the parliament which enacted this law was itself equally obnoxious to the charge.

So greatly were the lawyers disliked in former times, that whenever there was a popular tumult, they were sure to be singled out as an object of vengeance by the rioters. The complaint of Jack Cade was that of the common folk in his days: "Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? that parchment being scribbled o'er should undo a man?" His first command, when he entered London, was, as Shakspeare has represented it: "Now go some and pull down the inns of court:" and so effectually did his followers execute this behest, that they burnt the Temple with its libraries, and murdered all the students and "practisers" that they could meet with. When Wyatt's rebellion broke out in the first year of

* In the course of twenty years, the number of attorneys in an assize town increased from thirty to sixty, while the number of *causes* increased from thirty to forty.

Queen Mary's reign, and the rebels were marching upon London, so great was the consternation of the lawyers anticipating their fate, should the insurrection have proved successful, that they are said to have pleaded in Westminster-hall "in harness."

The charge of immorality which has been advanced against the lawyers, and from which we have striven to vindicate them, has been brought against the courts. The law, we are told, does not present to us a system of right and duties, determined by legislative authority and enforced by judicial sanctions. By the law not only are we not commanded to do what we ought to do, but even permitted to do what we ought not to do. Falsehood and deception, it is contended, are positively sanctioned by the law of England; and a passage in a well known and justly admired text book is cited in support of this position.

"A purchaser," says Sir Edward Sugden,* "cannot obtain any relief against a vendor for false affirmation of value; it being deemed the purchaser's own folly to credit a nude assertion of that nature." As an authority for this, the case of Harvey *v.* Young, reported in Yelverton (p. 20,) is given. The dictum which immediately follows is one which it might have been thought required the citation of no case to support; but the authority of Ekins *v.* Tresham (1 Leo. 102) is duly given. "Value consists in judgment and estimation, in which many men differ."

"Moral writers," observes Sir Edward Sugden, in the commencement of the work from which we have been extracting, "insist that a vendor is bound, *in*

* Treatise on the Law of Vendors and Purchasers. Introd. p. 3, 7th edition.

*foro conscientiæ* to acquaint a purchaser with the defects of the subject of the contract. Arguments of some force have, however been advanced in favor of the contrary doctrine, and *our law does not coincide with the strict precept of morality.* If the purchaser was, at the time of the contract, ignorant of defects [in the estate], and the vendor was acquainted with them, and did not disclose them to the purchaser, yet if they were *patent* and could have been discovered by a vigilant man, no relief will be granted against the vendor. *The disclosures of even patent defects may be esteemed a moral duty,* but it is what the civilians term a duty of imperfect obligation. *Vigilantibus, non dormientibus jura subveniunt* is an ancient maxim of our law, and forms an insurmountable barrier against the claims of an improvident purchaser."

According to the same authority, it appears to be doubtful whether, "if a vendor know that there is a *latent* defect in his estate, which the purchasers could not by any attention whatever, possibly discover, it is not clear that he is not bound to disclose his knowledge, although the estate be sold expressly subject to all its faults."

These instances have been brought, and not without reasons to establish the position that the law of England, with whatever wisdom it may be framed, and whatever pretensions its professors may advance, in many and important instances it is at variance with the acknowledged principles of sound morality. There is little difficulty in advancing charges of this kind against any system of law, and there is none with which we are acquainted, that is not obnoxious to the like; it is a matter of rather greater difficulty to

effect a redress of the evils charged. Much needless comparison and difficulty has arisen in relation to the subject, from the popular misconception of the nature of that system which we denominate "*equity-law*," and which is by many well-meaning persons supposed to consist in notions of pure abstract justice. They believe that the duty of the chancellor is to enforce as between parties the performance of what good faith and right feeling would dictate; not knowing that, as we have already shown, this term denotes a rigorous system of law founded upon precedent, and recognising principles which it is no more consti u-tional to violate or depart from, than it is for the judge, sitting on the bench of a common law court, to despise or neglect the decisions of his predecessor, or the express declarations of an act of parliament.

Against our system of pleading it has been frequently objected, that it sanctions and positively invites the commission of falsehood, thinly disguised under the plea of fictions generally understood to be such. The fiction by which the jurisdiction of the three superior courts of common law, in Westminster-hall has been equalised, has been made the subject of serious complaint. Sham pleas, and the various counts usually permitted in declarations in former times, aroused the hostility of those who thought with Lord Mansfield,* that "the rules of pleading are *founded* in strong good sense," and who, with him, believed that "by being misunderstood and misapplied, they are often made use of as instruments of chicane." Speaking of Sir Mathew Hale, Bishop Burnet says, "His father was a man of that strict-

* Robinson v. Raley, 1 Burr. 214.

ness of conscience, that he gave over the practice of the law, because he could not understand the reason of giving color in pleadings, *which as he thought was to tell a lie.* And that, with some other things commonly practised, seemed to him contrary to that exactness of truth and justice, which became a christian, so that he withdrew himself from the inns of court to live on his estate in the country." "Color," says Dr. Cowell "signifies, in legal acceptation, a pro table plea but, in truth, false; and hath this end, to draw the trial of the cause from the jury to the judges." He gives the following instance:

"In an action of trespass for taking away the plaintiff's beasts, the defendant saith, that before the plaintiff had any thing in them he himself was possessed of them as of his proper goods, and delivered them to A to deliver to him again when he and A gave them to the plaintiff; and the plaintiff supposing the property to be in A at the time of the gift, took them from the plaintiff, whereupon the plaintiff brings an action: that," adds Dr. Cowell, "is a good color and a good plea."*

In the year 1730, very serious efforts were made to remedy the grievances to which the defects of "law and lawyers" had subjected his Majesty's faithful subjects. Throughout the different Ridings of Yorkshire large meetings were held, in which petitions to parliament were adopted, delaring the evils, and intreating a remedy. The petition of "the justices of peace, gentlemen, and grand juries of the West Riding of the county of York," complained "that it most frequently happened that none of the grand jurymen, serving at the quarter sessions understood Latin, yet were obliged to make their presentments or indict-

ments upon oath in that language: That when the proceedings of justices of peace were removed by certiorari, the returns were to be made in a character and language unknown to any but the learned in the law, which puts justices to great expense in feeing counsel to draw the same: That special pleadings are found to be not only expensive, intricate, and dilatory, but highly prejudicial to the property of the subject; since many persons have, merely by the strict rules of pleading and uncertainty thereof, lost their estates: That by some mismanagement in the execution of a late good and profitable law, the number of attorneys continued to be excessive, and men of known infamous character had been lately admitted in the courts to practise in that profession." This, with other petitions of a similar nature was referred to a committee of whom Sir George Saville was chairman; and who reported to the house their opinions (inter alia) that, in the words of the petitions, "special pleadings are very expensive, intricate, and dilatory, and highly prejudicial to the happiness of the subject." By the 4th Geo. II, c. 26, which passed in consequence of the recommendation of this committee, nothing was done towards remedying the evil complained of except requiring that law proceedings should be prepared in the vernacular tongue, and that the practice of writing them in a peculiar (commonly called court) hand should be altogether abolished.

Much censure has been cast on the profession for the manner in which they have discharged the duties that have devolved on them as counsel for the prisoners arraigned at the bar of criminal justice. Availing themselves of mere technical inaccuracies in the indictment, they secure for the guilty an escape from

the punishment to which their offences rendered them so justly obnoxious. There are many instances of this nature which frequently occurring will readily suggest themselves to the minds of our readers. The following case not only illustrates the point, but is exceedingly remarkable and interesting and well deserves perusal in itself:

In 1803, Mr. Swainston the cashier of the Bank, called upon Mr. Bish the stock-broker, and requested him to purchase £50,000 in the three per cent. consols for him, "for the opening" as it is called. Mr. Bish, considering this speculation a little too hazardous, without some security against the fluctuation of the market, declined entering into it unless security was deposited with him to the amount of six per cent.—To this, Swainston acceded, and afterwards brought to him three exchequer bills. When Mr. Bish saw these bills he instantly remembered that they had been sold to the Bank, and being well aware that exchequer bills bought by the Bank are never circulated again, immediately suspected that something was wrong, and without hinting his surmises to Mr. Swainston, forthwith acquainted the governors and directors, with the facts. This led to inquiry.

In the presence of a director and an officer of the Bank, Swainston declared that an exchequer bill bought by the Bank, could not by any possibility get again into circulation, and when he was asked whether he had any concern in a transaction, respecting exchequer bills with Mr. Bish, replied, that he had purchased some stock for a friend through Mr. Bish, with whom he had deposited some exchequer bills as security. When asked to mention his friend's name, he, at first, declined, but, on being pressed, named a

gentleman in a banking house at the west-end. He said that these bills could not be Bank Exchequer bills, and once or twice looked into the "bought book" in which all similar bills are registered, and declared they were not entered there. When he had left the room, a director examined the book and found the very bills properly entered. Upon this, the bank immediately instituted a prosecution against the prisoner.

After Mr. Garrow, who appeared for the Bank, had concluded his address, in which he detailed these circumstances, Mr. Erskine rose and took an exception to the indictment. In every count the prisoner was charged with secreting and embezzling exchequer bills. Unless, therefore, the pieces of paper which the prisoner had taken, could be proved to be exchequer bills, the indictment must be quashed It was quite clear, argued the counsel, that the Lords of the Treasury have no authority to issue exchequer bills, except under act of parliament. Under an act passed in 1799, power was given to them to issue exchequer bills to a certain amount, "in like manner and form and under and subject to the like rules and directions as and in a certain act were given," with a proviso that every exchequer issued under the authority of that act should be signed by the auditor of the exchequer or some person in his place duly authorised to sign the same by the Lords of the Treasury.—Now the bills in question were signed by a Mr. Jennings, who, in the year 1799, was duly authorised, conformably with the provisions of the act, to sign the exchequer bills. But this authority extended no farther than the limitation of the act of 1799: and no authority had been given to him to sign those of the two last issues. The bills, however, that were thus

irregularly signed, were not consequently void, for an act had been passed expressly to declare them legal, but, in that act, there was a clause, providing that it should not extend to the case of any prisoner now charged with any crime. The Lord Chief Baron ruled the objection fatal, and directed the jury to acquit the prisoner.

The attachment to mere technicalities which has been always mentioned as detracting so much from the title of the legal character to respect has had a very great tendency to preserve to the law a uniformity and certainty, without which it would have been a science, merely in name.

Judge Buller, so eminent for his skill in special pleading, had a great respect for mere forms, often of no value. He once expressed his apprehensions that an indictment laying the property in James Hamilton, *commonly called* Earl of Clanbrassil, was bad, as Hamilton was earl by right, and not by courtesy. The other judges, however, considered the objectionable words as merely words of surplusage, not vitiating the indictment.

In the case of Marsham *v.* Buller, (2 Roll Rep. 21) which was an action of trespass, the jury found for the plaintiff, and gave a half-a-farthing damages.—Richardson in arrest of judgment, said that the damage which a jury give ought to be valued, and there was no such coin as half-a-farthing. Doddrige J. said to Richardson, "your purse is full; but if you were at Oxford, you would get a draught of beer for half-a-farthing." Houghton J. said, you may have *fieri facias* (execution against his moveables) and levy half a farthing by an egg. So the plaintiff had judgment.

The reports of cases which wagers have formed the

subject, afford some amusing instances of "the Curiosities of Law." For most of these cases we are indebted to a very interesting lecture on the subject, delivered by the late Mr. Dodd, at the Law Institution.

In Andrews *v.* Herne (1 Lev. 33) the court of King's Bench tried a wager of £20 to 1, that Charles Stuart would not be king of England in twelve months, he being then in exile, and it being six months before the restoration, it was decided that the bet was good, for though Charles was king when it was made, he was out of possession.

In 1771, a Mr. Pigot bet a Mr. Codrington 500 guineas, that his father would survive Mr. Codrington's father—Sir William, the father of Codrington was then a little turned fifty while Mr Pigot's father was upwards of seventy. An arrangement was afterwards made, by which the earl of March agreed to stand in Pigot's place, and reciprocal promises were accordingly given between the earl and Pigot. It turned out that at the moment of making the bet, Pigot's father was actually dead. The question for the consideration of the court was, whether Mr. Pigot's ignorance of his father's death absolved him from the wager. The court seemed to have treated it like the case of the policy of a ship, containing the words, "lost or not lost," that is, as if the words "dead or not dead" had been inserted in the bet, and held that Mr. Pigot had lost the wager. The gross indecency of the bet seems never to have occurred to their lordships.

Of bets that injuriously affect third persons, it has been decided no actions will lie. Upon this principle, Sir Vicary Gibbs, when chief justice of the court of

common pleas, refused to entertain an action upon a bet whether the celebrated Johanna Southcote was *enceinte* or not. During the long wars in the reign of Queen Anne, wagers upon their consequences became so numerous, that the 7 Ann, c. 16, was passed for the express purpose of declaring them illegal. Some cases of a similar character to those quoted will be found in Mr. Dodd's lecture.

Most undoubtedly the charge of immorality so often and readily advanced against the law, was just in a great measure in reference to the criminal law, as it existed in the days before the besom of reform had swept the floor of Westminster Hall.

The case of William Potter, who, in the assizes for Essex, in 1814, was capitally convicted of the offence of cutting down trees, is an illustration of this remark. According to the evidence of the committing magistrate, given before a select committee in the house of commons on criminal laws, in 1819, Potter was a very bad character, and owed a spite against a miller in the neighborhood, who had him committed for snaring hares. The miller had planted an orchard of young trees, of which he had taken especial care: upon getting up one morning he found all his trees cut down. He went to a neighboring magistrate and complained, stating his suspicions of Potter. The magistrate issued his warrant, and had Potter brought before him, and, upon comparing his shoe with the footsteps in the orchard, committed him to prison. The offence was proved against him, and indeed, before the trial, he confessed it—he was convicted, and received sentence of death, in spite of a petition for mercy signed by the clergyman, the committing magistrate, and several of the inhabitants

of the parish. This was the only execution with which we are acquainted in pursuance of this law. This man was punished, not for the offence which he committed, but for his general bad character.

Mr. Wilberforce stated in the House of Commons, that had Mr. Pitt's life been spared, it was his intention to have, at an early period, prepared a digest of the whole criminal law.

The following ludicrous, but well known cases are worth citation, illustrating in some degree the *morality* of the law:—

A the attorney of B, brought an action against C for saying to B, your attorney is a bribing knave, and hath taken twenty pounds of you to cozen me. Judge Warburton held the words not actionable, for an attorney cannot take a bribe of his own client; but Hobart said he might, when the reward exceed measure, and the end against justice, as to raze a record, &c. And Hobart says, after he had spoken, Justice Warburton began to stagger in his opinion, so the plaintiff had judgment. Hob. 8, 9; and 1 Roll. 53.

One Howel Gwin was convicted of forging a deed, by putting a dead man's hand to it, and condemned to £100 fine, and to stand in the pillory two hours before the hall door.

Memorandum, he cut off a dead man's hand, and put a paper and a seal into it, and so signed, sealed, and delivered the deed with the dead hand, and swore that he saw the deed sealed and delivered. Style's Rep. 362.

A man and his wife had lived a long time together and the man having at length spent his substance, and living in great necessity, said to his wife, that he was now weary of his life and that he would kill

himself: the wife said that she would die with him; whereupon he prayed her that she would go and buy some rats-bane, and they would drink it together; which she accordingly did, and she put it in to drink. and they both drank it off: the husband died; but the woman took salad oil which made her vomit, and she recovered. Query, if murder in the wife. Moor. 754.

A says to B, one of us is perjured. B says to A, it is not I. And A says I am sure it is not I. B shall have an action for these words, for the subsequent words show apparently that he intends him. Coe *v.* Chambers, 1 Roll. 75.

Justice Twisden said, he remembered a shoemaker brought an action against one, for saying he was a cobler; and though a cobler be a trade of itself, yet it was held the action lay in Chief Justice Glyn's time. Mod. Rep. fol. 19.

Libel for calling a man a knave: prohibition lies, because in the time of Henry VI, knave was a good addition. Week's case, Latch, 156; 1 Siderf. 149.

One said of a Justice of the peace, He is a loggerheaded, a slouch headed, and a bursen-bellied hound. This is no cause of indictment before justices of the peace in their sessions, partly for want of jurisdiction, and partly because the words are not actionable. This was assigned for error after judgment. 1 Keb. 629.

The inequality of the law is something illustrated by the following decisions.

If a man say of a counsellor of law, "Thou art a daffa-down dilly, an action lies" (1 Vin. Ab. 465). "He hath no more law than Mr. C's bull." These words spoken of an attorney, the court inclined to

think that they were actionable, though it had not been pleaded that C had a bull. (1 Sid. 327, fol. 8, Pasch. 8, Car. 11.) The chief justice was of opinion that if C had *not* a bull, the scandal was greater: and the court held that to say of a lawyer, "He hath no more law than a goose," is also actionable. There is a query added, whether saying "He hath no more law, than the man in the moon;" the law doubtlessly contemplating the possibility of there *being* a man in the moon and he a sound lawyer. To say to a man "You enchanted my bull" (Sid. 424); to say "thou art a witch," or "that such a person bewitched my husband to death," is clearly actionable. (Cro. Eliz. 312.) On the other hand, you may say if you please of another, "That he is a great rogue, and deserves to be hanged as well as G, who was hanged at Newgate;" because this is a mere expression of opinion, and perhaps you might think that G did not deserve hanging. (T. Jones, 157.) You may say that you know "Mr. Smith struck his cook on the head with a cleaver, and cleaved her head; that one leg lay on one side, and one on the other," because it is only to be *inferred* that thereby Mr. Smith's cook died, and this in the reported case is not stated. (Cro. Jac. 81.) *A fortiori*, you might say, "Mr. Smith threw his wife into the river, and she never came up again," or "Mr. Smith cut off Jack Style's head, and walked with it into Leicester town;" for this is all inference.

The equality in considering persons for which our law has been so much bepraised, did not attach to it in early times. "Some trespasses," says Britton, "do deserve a greater punishment than others, as trespasses committed in a time of peace *against knights or other honorable personages* by Ribauds or such

vile-like persons in which case our pleasure is, that if a Ribaud be attainted, at the suit of any knight, of having feloniously struck him without any provocation from the knight, the Ribaud shall lose the hand with which he offended." The Ribauds here spoken of were sturdy beggars.* The House of Commons at sundry times have considered that the property and persons of its members are to be tendered more clearly than those of others of her Majesty's subjects. They came on one occasion to the following resolution:—

Resolved, That it is the opinion of this committee that Sir Richard Perrot, having entered into possession of a cellar in the occupation of a tenant of Charles Fitzroy Scudamore, Esq. a member of this house, is thereby guilty of a breach of the privilege of this house." The house thereupon ordered, "That the said Sir Richard Perrot be for his said breach of privilege taken into custody of the serjeant at arms attending this house."†

The English law, it is usually said, is a law of mercy, affording every favorable presumption to the criminal, and preferring to suffer the escape of the guilty, than to incur the possibility of subjecting the innocent to punishment. Against the propriety, against, even, the wisdom of these principles, we are not going to contend, but it has always appeared to us, that the use that has been made of them, and the extent to which they have been pushed, in practice, have militated somewhat against the objects for which laws

* Cotton. Abridgment of the Records, p. 200, No. 52. 3 Inst. 111. Britton, Franklin. p. 167.

† Comm. Journ. 16 March, 1670.

and judges and lawyers exist—the due adminlstration of justice.

Mr. Cottu, in comparing the English and French jurisprudence, expresses his admiration of the maxim "that no one is bound to criminate himself," and approves of the practice of our courts in not subjecting the accused to examination. But we are free to confess, that it seems to us something more than doubtful how far our procedure in that respect is worthy the commendation it has received. "When," as is observed by the Quarterly Reviewer, "you have accumulated sufficient evidence of guilt to imprison a citizen, you are, surely, by every principle of common justice, required to hear what he can plead in his defence. That his defence may lead to his conviction is true, but surely so it ought if he be guilty; no man speaks falsely against himself, and no one but the individual can truly relate all the circumstances which justice has a right to know, or at least a right to inquire into. In no case can it be supposed that the prisoner is to be *forced* to answer. * * * Prisoners if they were all guilty and all prudent, would soon learn the advantage of holding their tongues: but if the innocent or the indiscret choose to speak, what principle of justice or equity forbids us to examine them?"* It happens and not unfrequently, that at the commission of a crime, none is present but the individual by whom the crime was committed. Unless, therefore, it be lawful to inquire of him where he was on a particular day, the ends of justice might be defeated. Surely if it be held consistent with mercy and equity to commit to prison any person whose character had previously

* Quart. Rev. vol. xxii, p. 243.

been without reproach, merely upon suspicion that he had violated the law, it cannot be held less merciful or less equitable to subject that person to interrogatories the aim and effect of which is to attain the purposes of that law. Our judges, from motives of humanity, have uniformly exhibited a disposition to discourage the prisoner from saying anything that would criminate himself. Mr. Phillips, in his "State Trials," observes, that a contrary system would not only inevitably lead to the detection of guilt, but would also serve to confound the innocent with the guilty. A question from a judge might embarrass and confuse the prisoner, however great his innocence, or under the effect of terror which his situation would naturally inspire; he might possibly equivocate, misrepresent, or even remain entirely silent. This would not unnaturally, be ascribed to the consciousness of guilt. It is believed that this statement is greatly exaggerated. Cases might arise and cases have arisen, in which what has really arisen from innocence alarmed, has been ascribed to the consciousness of guilt. But, except in rare instances, seldom have those, who have been in the habit of attending our courts of justice, been deceived in this particular. The workings of a guilty conscience betray themselves by signs and tokens not to be mistaken by those familiar with such scenes. It is not by the faltering voice and hesitating accents, the changing color and palsied hand, that the criminal can be distinguished from the guiltless. Innocence has not always a bold front, and crime may sometimes assume that rigid and obdurate carriage which may be mistaken for innocence. Guilt manifests itself of course variously according to the circumstances of the case and the condition of the individual;

and perhaps there was never an individual who was ever subjected to the ordeal of a court of justice who has made any voluntary statements whatever, whose guilt or innocence, that is moral guilt or innocence, was not securely predicated from those statements, apart from the evidence by which his fate was ultimately decided. In establishing any institution or framing any system, regard should uniformly be had to the character (if the term may be allowed) of the machinery by which it is intended to be carried out. Now, looking to the wise and merciful spirit in which our criminal jurisprudence has been administered—a spirit in remarkable contrast to the strict letter of the law, we may, we trust, without the slightest fear of abuse, entrust to our judges the discretionary power of examining the prisoner or not as they should think fit. Perhaps it would be as well, seeing the matter requires some caution to adopt M. Dumont's suggestion and confine the occasions upon which the prisoner should be examined to those in which the evidence, without his testimony would be defective.* It is also worthy of remark, that the practice of not examining the prisoner is confined to England, and has arisen there only since the Revolution.

Another part of the same system, springing from the same principle, is ludicrously absurd, if indeed it deserves not severer censure. If a prisoner, even, one against whom the evidence is so clear, that chance of escape he has none; weighed down with remorse for the crime that he has committed—desirous in nowise

* Mr. Bentham, whose principles can scarcely be charged with inhumanity, has always regarded our present custom as the result of prejudiced and misguided feelings of pity.

to escape the arm of that justice which he has offended—willing to make all the atonement in his power, places upon the record an admission of his guilt; the judge and the jury, charged as they are with the detection of offences, and the punishment of offenders, combine their voices with one accord to induce the unhappy culprit, against his conscience, to withdraw his plea, and, by the assertion of a positive untruth to avail himself of some technical informality in the indictment or perhaps merely to undergo the mockery of a trial.

Hayton, in his history of the Tartars, observed of that people "that, although in other respects they are most notorious liars, yet in two things, they strictly observe the truth: first, no man amongst them even arrogates to himself the glory of an exploit which he hath not performed; and secondly, whoever has committed a crime though such as he knows will cost him his life when he is examined by his lord, he will never conceal the matter."

To tell a lie to a judge, was, in former times held, of itself, a capital* offence. There is, in our custom, something strangely revolting and indeed opposed to right reason as well as sound morality. There have been, however, for many years afloat on that wild flood, "the still vexed Bermothes." public opinion, strange notions with regard to criminal law which if once adopted into our jurisprudence, if once brought into practical operation, would prove, if proof were needed, how little or at least to how little purpose, political philosophy is cultivated in this country. As it is, intelligent foreigners have been greatly struck by the strange anomaly which our criminal law and procedure present. An anomaly still more striking and

remarkable it was a short time ago. What could they think of a law the most rigorous in its provisions and the most lax in its administration; affixing the severest penalty to every offence, yet with that penalty rarely inforced and the intentions of the legislature repeatedly defeated. And his astonishment would not diminish at all, when in looking more closely, he observed the means by which this strange contradiction was accomplished. The injured, not prosecuting—juries, acquitting in the face of the clearest evidence, and judges,* sworn to administer the law, seeking with anxious eyes for every flaw and inaccuracy, which might shelter those of whose guilt it is impossible that they could entertain a moment's doubt.—This arose from the undue severity of the law; and it has taught legislators a lesson, by which it is likely that they will profit, that, in affixing to any offence a penalty they must have respect to public opinion, being careful, not only to award no penalty which they consider as too severe, but being careful, also, to award no penalty which that great mass, the public, of which prosecutors, witnesses, the jurymen and judges are integral parts, do not consider as appropriate. This is necessary in short in order to secure that the guilty may receive some punishment at all, but

* Is there not something absurd in the maxim that the judge should be the prisoner's *counsel*? Should the judge sit there for any other purpose than that of instructing the jury in the law of the case and of acquainting them with the effect and substance of evidence? It certainly is desirable that if any counsel sit upon the bench it should be the counsel for the prisoner; but far better than this would it be, that no counsel should sit there at all. The mind of the judge should be, which if the maxim stated were fully carried out, it could not be, wholly unbiassed.

really the matter assumes a very serious character when we consider how necessarily incompetent to judge in questions of this kind, *the public* must be, seeing that these are questions, on which, those, whose intellects are of the highest order and whose information is the most extended as well as the most accurate, are greatly divided. Unless you mean that there are some crimes which are not to be efficiently repressed, it is absurd to say as the public do, that the severity of a punishment is to be proportioned to the immorality of the crime. We have dwelt, however, too long on this subject.

We may, however, in dismissing it, express, with many others, our regret that a change has not been effected in the manner in which oaths are administered in our courts of justice. There can be nothing more unseemly, nothing more irreverent than the system at present pursued: it contrasts very remarkably with the way in which this ceremony is performed in the criminal courts in Scotland. There, the administration of an oath is esteemed so important, as well as so solemn, an act. that it is intimated to no one, but the judge presiding: and those who have attended these courts can bear us out in the assertion, that it is always administered with becoming reverence and gravity. We would also avail ourselves of this opportunity of recording how heartily we concur with those persons who have, of late, been striving to reduce the number of occasions on which the law requires an oath to be taken. It is to be apprehended that the present system has promoted perjury, and could be abandoned without danger. Mr. Pemberton, in a speech he delivered last session in the House of Commons, told a story of a boy who was put into an

attorney's office as clerk, and who, on being asked by one of his friends, how he got on, "Oh," he replied, "surprisingly; I already swear to service, and I shall swear to merits, next term." The anecdote excited much amusement: it might have caused a sensation of another character.

It is, in a great measure, things of this kind which has induced that low estimate of "the morality of Law and Lawyers," which we have been considering. But we cannot help thinking that it was scarcely fair that in the public mind one branch of the profession should be so heavily judged, and still more, knowing the truth of the case that the highest branch should have, in obedience only to a vulgar prejudice, lent some currency to the scandal.

It is true that the estimation in which the solicitors were held by the bar in former times was very different to what it is at present. Yet even now we are pained by seeing the ancient prejudice, which should never have survived its cause, still operating in the minds of men worthy of better things. We remember, not long ago, in the court of chancery, a *then* attorney-general, displaying it to an extent which at once disgusted and surprised every one present. He was making some assertion, which the solicitor on the other side evidently believed unsupported by facts—this conviction he expressed to his counsel in a low whisper—so low that the writer who was nearer him than the attorney-general, could not catch a word of what passed—but "Mr. Attorney," evidently conscious that his *ruse* was detected, turned round to the offending solicitor and exclaimed with a voice of thunder and an action peculiarly *Demosthenic*, "Sir, I *desire* that whenever *I* am speaking, you and every

other attorney in *this* court (surveying the terrified row before him) will not venture to interrupt me."

Sir William Garrow had a peculiar dislike to attorneys—He hated them to a degree that made him behave to them with positive ferocity. Sir Vicary Gibbs concurred in this aversion. Indeed, "Vinegar" is said to have punished one of the tribe by boxing his ears in open court. This was of course when he was at the bar. The little mean dirty tricks of which some of the class have been guilty, entitle such persons to be despised and shunned. Mr. Chitty relates an anecdote of a young attorney who had been carrying on a correspondence with a young lady, in which he had always, as he thought, expressed himself with the greatest caution. Finding, however, that he did not perform what he had led the lady to believe that he would, she brought an action for breach of promise of marriage against him. When his letters were produced on the trial, it appeared that he had always concluded—"this *without prejudice*, from your's faithfully, C. D." The judge facetiously left it to the jury to determine whether these concluding words, being from an attorney, did not mean that he did not intend any prejudice to the lady, and the jury found accordingly.

It is very far from our intention in expressing our belief that, as a number, a more right-minded, honorable, and useful body does not exist, than the solicitors of England, to deny, that amongst them there are not to be found some worthy of being characterised in very different terms. We do wonder that the Law Journals, and there are several now existing which are carried on in a right spirit and with fearless and independent tone which is highly commendable,

have not turned their attention to the subject. A few timely exposures would do great good.

Perhaps there are few men that have seen much practice, who have not learnt that for one petty-fogging attorney who has seduced unwary and ignorant clients into litigation, there have been a dozen ignorant bull-headed revengeful people who have sought the law as a means of vengeance or aggrandisement and have never blamed the lawyer but when they lost their cause. Boz has told a story of a man who was ruined by having a legacy left him; there have been more instances of men's having been ruined by having won a law suit. Roger North relates an anecdote of a Mr. Stutvile who had exposed himself to the vengeance of an individual named Robinson, whose domestic happiness he had destroyed. In order to repair the injury he had done he gave Robinson a bond for £1500. The bond was prepared by a scrivener, who accidently omitted in the conditionary part, the words "else to remain in full force." After the sealing, the omission was discovered, and Robinson, in a terrible passion, posted off to the scrivener. "Here is a condition," said he, "to make the bond void, but none to make it good." The scrivener told him that the mistake was not to be remedied, but, at last, was forced to insert the proper words, of which fact he apprised Stutvile. North, who was Stutvile's counsel, apprehending that Robinson would not proceed on the bond until the scrivener's death, preferred an information against Robinson for forgery who dreading the conviction, gave up the bond. "But this unexpected success," says Roger North, "made such an impression on Stutvile's wild brains, that he thought there could be no law suit desperate; and from that

time he never did any man justice, but ruined himself by perverse law suits, and at last died in gaol. Perhaps had he paid the £1500, his punishment had been less."

It has been in a great measure the honorary character which attaches to the bar, which has obtained it so high a degree of estimation. On this subject Mr. Coleridge has used the following language: "I would be sorry," says he, "to see the honorary character of the fees of barristers and physicians done away with. Though it seems to be a shadowy distinction, yet I believe it to be beneficial in effect. It contributes to preserve the idea of profession, of a class which belongs to the public; in the employment and remuneration of which no law interferes, but the citizen acts as he likes *foro conscientiæ*."

Lawyers are, it is notorious, a class least anxious of any "to go to law." Their antipathy to appearing before a court in any other shape than that of representatives of other individuals, results, as we may fairly suppose, from the intimate knowledge they possess of "what a law suit is." It has been related of Mr. Marryatt, the eminent king's counsel, that some time after he had retired from practice, being present at a conversation, in which some remarked on "the glorious uncertainty of the law," he observed with great animation, "If any man were to claim the coat upon my back, and threaten my refusal with a law suit, he should certainly have it; lest in defending my coat, I should find that I was deprived of my waistcoat also." Dunning is known to have dreaded, above all things, becoming involved in litigation. One day, on returning to his house near town, he was met in the front garden by the gardener, full of complaints of some

"owdacious fellow," whom he had found trespassing in one of the neighboring fields. "Well, and what did you say to him?" inquired Dunning. "Oh! sir, I told him if I found him there again, you would be sure to prosecute him." "You may prosecute him yourself, John, if you like; but I tell you what, he may walk about my fields till he is tired, before I will prosecute him!"

The lawyers, we presume, hold the doctrine "meglio è megro accordo, che grassa sentenza."* How fortunate for them that every body else does not think so too!

If we may believe an old writer, the lawyers of ancient times were more conspicuous for attention to their clients' interests, than for the *amiability* of their demeanor at home. Speaking of a great lawyer of his day, Sibs observes, "For his conversation in his family, hee was very milde and gentle at all times: not *as some*, who being sweetened with a fee, are wonderfull milde and calme to their clients, but are lions in their owne houses."† The writer would hardly have dwelt on such a point if the character of lawyers had not been so. The wealth and eminence of the lawyers and the doctors was probably, however, causes of the dislike which, in former times, was borne towards them. There is an old apothegm which says, "Dat Galenus opes; dat Justinianus honores, Astronomicus, Logicus, semper, egenus exit."

* A lean agreement is better than a fat sentence.

† The Bride's Longing for her Bridegroom's Second Coming—a sermon preached at the funeral of the Right Worshipful Sir Thomas Crew Knight, Serjeant at Law to his majesty. By the late learned and reverend divine, Richard Sibs, 1638.

"Lawyers," says Wilson the Logician, "never die poor."

"I have heard old men say, they remembered when lawyers, at the beginning of a term, would stand at a pillar in Paul's Temple Bar, the corner of Chancery Lane, and other avenues, attending the coming in of their countrymen, with cap in hand courteously saluting them, and inquiring what business brought them to town; not much unlike watermen plying for a fare. But now they are grown to that height of pride, that a man can hardly (after long attendance) come so near a great lawyer's study door, as to bid *God save him* without a fee or bribe."*

The following anecdote should have appeared in another place. It deserves, however, insertion, and we trust its appearance will here be excused.

It has been related of Mr. Justice Lawrence, a most excellent man and able judge, that at a trial at York he summed up decidedly in favor of the defendant; but having given the case further consideration, it appeared to him that he had altogether mistaken the law. A verdict having been recorded for the plaintiff, he had no redress; but it is generally understood, that the judge, feeling the hardship of his situation, left him in his will a sum of money sufficient to indemnify him for the loss he had thus sustained.

The "Morality of Law and Lawyers" is neither superior nor inferior in its quality to the morality of any other class; and it is to nothing but the ignorance of calumniators that the opinion of its inferiority can be ascribed. There are indeed some practices in the

* Some advertisements for the new election of burgesses for the House of Commons, 1646.

profession which we would fain see abandoned, and we are confident that their abandonment without diminishing the actual gains of the lawyer would tend considerably to exalt him in the estimation of the public. We refer to those fictitious charges which swell the amount of the solicitor's bills, charges, often for work not done by them, or perhaps not done at all; charges, sometimes for the merest trifles and performance of the most insignificant duties. Every one who has been honored with the perusal of a document of this kind, will recall to his recollection the words "Term fee," "Procuration fee," "attending counsel and delivering brief," "attending to get deeds stamped;" "drawing lease for a year;" and numberless other items of a similar character which have crowded the awful sheets. Now when it is remembered that it is some errand boy or inferior clerk whose services are valued at ten shillings a week, that leaves the brief at the counsel's chambers, the fee usually charged will surely appear too high; and, also, that it is, in nine cases out of ten, a stationer that obtains the stamps affixed to the parchment, for which he is paid nothing, the charge for this can hardly be defended, nor can the sum which the client is called on to pay for drawing a lease for a year, a merely formal document, be defended, seeing that it is invariably prepared either by the aforesaid clerk or the aforesaid stationer. We could continue our remarks on this subject much longer, but enough has been said to direct public attention to the subject. We allude to it in a spirit the very reverse of hostility to the solicitors; we do so with no other wish than that they would reform their practice and put down by the most effectual means possible, the malicious and ungenerous insinuations

to which they have been subjected. We are far from believing them as a body over-paid; it is not the amount of their gains we challenge; it is the form and means in which and by which these gains are acquired to which we object. We believe that the fair amount of these gains has in modern times been greatly diminished through the activity of interlopers and the deficiencies of the law. In the country, at this moment there are a considerable number of persons neither certificated, nor attorneys prosecuting a thriving practice, greatly to the detriment of those who to fit themselves for their profession, have spent a considerable time in study as well as paid heavy duties to the government. This is an evil which cries aloud for speedy remedy, and we do trust that in fairness, and for the protection of an honorable profession something will speedily be done.

# NOTES AND ILLUSTRATIONS.

# TABLE.

# NOTES AND ILLUSTRATIONS.

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## A GRAND JURY.

[Vol. I, page 29.]

Sir John Dodderidge, who was one of the justices of the Court of King's Bench in the reign of James I, having found fault with the sheriff of Huntingdonshire for impannelling men not qualified to be on the grand jury; the sheriff was resolved, next time the judge came that circuit, he would incur no such reproach. The following is a list of the jury he afterwards impannelled:—

Maximilian, *King* of Tozland
Henry, *Prince* of Goodmanchester
George, *Duke* of Somersham
William, *Duke* of Weston
William, *Marquis* of Stukely
Edward, *Earl* of Hartford
Robert, *Lord* of Warsley
Richard, *Baron* of Bythorpe.
Robert, *Baron* of Winwick
Edmund, *Knight* of St. Neots
Peter, *Esquire* of Everton
George, *Gentleman* of Spaldock
Robert, *Yeoman* of Boshan

Stephen, *Pope* of Weston
Humphrey, *Cardinal* of Kimbolton
William, *Bishop* of Bugden
John, *Archdeacon* of Paxton
John, *Abbot* of Stukeley
Richard, *Friar* of Ellington
Henry, *Monk* of Stukeley
Edward, *Priest* of Graffham
Richard, *Deacon* of Catsworth.

There is one circumstance, however, which seems to impugn the authenticity of this anecdote, which is, that the above list only exhibits twenty-two names; whereas twenty-four is the usual panel.

## LAWYERS' OPINIONS OF LAW.

[Vol. I, page 125.]

The extravagant terms in which the law of England has been spoken of by those whose occupations must have rendered them particularly acquainted with its defects, have begotten in the public mind the opinion to which we have already alluded, that law reform can never owe any thing to lawyers themselves, but that it must, of necessity, be the work of some one else.

Since the days of Fortescue, the lawyers have been, with but few exceptions, "de laudibus Legum Angliæ."

Fortescue, himself, asserts that the laws of England were not only very good, but the very best that could be devised: "Quare non immo non optimas esse Anglorum consuetudines, sicut non dicere, ita nec suspicari fas est." Plowden says, that the law "was no other than pure and tryed creson." Lord Ellesmere observes, that "The common laws of England are grounded upon the law of God, and extend themselves to the original law of nature, and the universal law of nations." Sir Edward Coke speaks in not less glowing terms, "Reason is the life of the law; nay, the common law itself is nothing else but reason, which is to be understood of an artificial perfection of reason, gotten by living study, observation, and experience, and not of every man's natural reason for *nemo nascitur artifex.*

This legal reason *est summa ratio.* And, therefore, if all the reason that is dispersed into so many several heads, were united into one, yet could he not make such a law as the law of England is; because, by many succession of ages, it hath been fined and refined by an infinite number of grave and learned men, and by long experience grown to such a perfection, to the government of this realm, as the old rule may be justly verified of it—neminem oportet esse sapientiorem legibus—no man (out of his own private reason) ought to be wiser than the law, which is the perfection of reason."

Lord Cathcart, who had spent his life in courts and camps, said, that he could form a clear opinion upon most of the cases that came before the House of Lords.

Sir William Jones, when a boy, and previous to the time that he resolved upon adopting the bar as his profession, read and mastered Ireland's Abridgement of Coke's Institutes, and with such attention, that he frequently amused the legal friends of his mother, by reasoning on them in old cases, which were supposed to be confined to the learned in the profession.

It is well known that many English gentlemen, detenues at Verdun, who were in no degree connected with the profession, beguiled the tediousness of their confinement by a serious perusal of Coke upon Littleton, and have often spoken afterwards of the great mental delight which it afforded them.

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## THE COURT OF CHANCERY.

[Vol. I, page 151.]

We have, in the text, expressed our opinion, that the views generally entertained respecting the origin of the Court of Chancery are altogether unfounded. To those who are anxious to pursue their researches into this very interesting and important question, we beg to reccommend Sir Francis Palgrave's able "Essay upon the Original Authority of the King's Council." Of the early periods of our constitutional history, much less is unknown than we are apt to suppose. Little credit is due to those writers from whom we have been accustomed to take our learning on this subject. They were denied the advantages which we possess of consulting original documents. Of

these, some of the most valuable have been published under the superintendence of the record commission; to which, however just may have been the censure to which it has been subjected, we are undoubtedly under great obligations. The chancellor's authority arose out of that which the king's council anciently exercised in advising the king, who was, and by fiction of law still is, considered the fountain of justice. The judges are still the *king's judges*, although it has been long considered that the sovereign cannot himself take part in the proceedings in the courts. He must speak through his judges. This Coke told to James I, when that most meddling and pragmatical of monarchs desired to preside in the King's Bench. Edward IV sat in the King's Bench on the trial of Alice Perrers, and the judges sat at his feet. He, however, remained silent throughout the proceedings. We give below a specimen of a bill in chancery, of the reign of Richard II. We need scarcely remark that it is a translation.

"To the very honorable and very reverend father in God, the archbishop of York and chancellor of England, Robert Bruddiate showeth and grievously complaineth of John Foster, That whereas the said Robert was going along, in the peace of our lord the king, the Saturday next after the feast of Barnabas, on the highway on the other side of tho town of Brentford, alone on foot, on a message to carry to Mr. Piers at Basiles* near Oxford; there the said John, with divers persons unknown all on horseback, met the said suppliant thus alone, on foot, without defence, and, on him, the said John cried, with a loud voice, in English, "Slay, slay the thief; shoot, shoot the thief." By force of which cry, all the people there being, surrounded the said suppliant in great numbers, and some of them bent their bows, and some drew their swords and daggers to kill the said suppliant. Whereupon, among others, a servant of the said John Foster shot the said suppliant with an arrow through all his clothes into his arm; and thereupon he commanded the said servant to cut off his head, and the strangers there would not suffer him. Whereupon the said John Foster took a bow-string and threw it into water, and then tied his hands so tight that the blood gushed out of his fingers;

* Probably Besiles-legh, five miles from Oxford.

and so led him as a thief to the town of Brentford, and there in the presence of divers persons, he would have killed him with his dagger, if it had not been for certain esquires of my lord the duke of York, when the said suppliant had no other expectation than that of his death. And thus they brought him in such durance to London, and put him into a house, and went in haste to the Comptor of London, and there affirmed a false plaint of account upon the said suppliant of £1000; and thereupon he had two catchpoles assigned to him to arrest the said suppliant; being thus in custody, he was delivered by the said John to the said catchpoles, led by both hands as a thief, and there, by the force of the said plaint, is to this day, detained in strong and close prison, in despair of his life. May it please you, for love of the Almighty, to examine the said John on this matter, and to investigate his cause, that to do and moreover to apply remedy and right to the said suppliant for [the love of] God and in work of charity."

In the Lansdowne MSS. in the British Museum [No. 163], there is much information contained respecting the court; it is called "Orders explained by Mr. Croke, 1551, upon the estate of the Chancery Courte." There are some particulars worth extracting. "The lord chancellor hath his diett out of the hanaper towards such charges as he is and was wont to be at, of which charges some be now out of use; as to have, in term time, such members of the chancery as would come to his house, to be at his table, and a chancery table in the hall for their clarkes." Anciently "there were three or four clarkes of the aumore (almonry) at meate and drinke in the lord chancellor's house, which, for their diett, served the poor suitors with their pces (process) without fee.—The clarke of the crowne, the clarke of the hanaper, and the ridinge clarke, have allowance for their chambers and diett in the lord chancelor's house, for themselves, or their deputies, one clarke and one horsekeeper a peece; the serjeant at armes, and one servant; the sealer and the chafer of wax; and all these except the clarke of the hanaper, have allowance for them when the lord chancelor doth jorney, and not otherwise. The clarke of the hanaper hath his allowance for horse-meat in his patents."

The office of six clerk was very valuable, for we find that in

the reign of Charles I, £6000 was paid to the earl of Portland to procure it for a man.

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## LORD STOWELL.

[Vol. I, p. 168.]

Lord Stowell was of a lively temperament, and extremely fond of society. He acknowledged to Mr. Croker, that he was "very convivial, and readily confessed his partiality to a bottle of port." One day when some one objected to the practice of having dinners for parish or public purposes, "Sir," said Lord Stowell, "I approve of the dining system; it puts people in a good humor, and makes them agree when they otherwise might not: a dinner *lubricates* business." Many of Lord Stowell's most luminous judgments, it is understood, were composed under the influence of wine, although he was never guilty of any thing that could be called excess. Boswell records a conversation between Scott and Johnson, in which Scott asserted that Addison wrote some of his best Spectators when excited with wine; an assertion which Johnson appeared unwilling to credit. Stowell was in the habit of joining the literary parties at the Mitre, where some of the highest ornaments of our literature used to assemble. He would endeavor to induce his brother John to accompany him to these symposia; but was invariably refused with the constant phrase, "Brother, I sup with Coke to-night."

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## MR. SERJEANT COCKLE.

[Vol. I, page 198.]

Serjeant Cockle's convivial powers were most remarkable. He was once retained in a very important case to be tried at York, and attended a consultation the night previously to determine on the line of defence. To the consternation of his client the Serjeant entered the room in a state of intoxication, and plainly showed that he was in no condition to attend to any business. He assured the attorney, however, that "all would be right in the morning," an assurance which did not give him

much comfort. Cockle then tied a wet napkin round his head and desired his junior, Mr. Maude, to inform him of the principal points in the case. After this, he went to sleep for a few hours, and presented himself in the court next morning, as fresh and ready as if he had passed the night in a very different manner. He cross-examined the witnesses with his usual tact and judgment, and his address to the court was as spirited and as forcible as any he had ever delivered. Not only did he succeed in obtaining a verdict for his client, but is said to have distinguished himself in a greater degree than he had ever done before.

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## SIR SAMUEL ROMILLY.

[Vol. II, page 29.]

In early life Sir Samuel Romilly became attached to a young lady in every way worthy his affections. He was one of those

> "Who ne'er was blest by fortune's hand,
> Nor brightened ploughshare in paternal land;"

with nothing but his profession to rely on, and with both his parents dependent upon him for the means of support. His conduct under these circumstances was creditable to his head and heart. He declared his passion to her, who was their object, and was delighted to discover that his regard was returned. Acquainting her with his circumstances, he told her that before they could marry, he must "make two fortunes," one for those to whom he owed his existence—the second for herself. He applied himself to his gigantic task with industry and courage, and in a very few years realized a sufficient sum of money to purchase for his parents a competency and then beginning his toil again, acquired for his bride "a second fortune." Long before Romilly became known at the bar, Parr said of him to a pupil of his, "Mark my words—Romilly is a great man—we who are his friends know this now but in a little time the world will know it." After Romilly's death Parr seldom mentioned his name without a sigh.

"I didnot like Romilly," says Dr. Southey, "in a private

Letter to Sir Egerton Brydges. He was more of an antique Roman or a modern American, than an Englishman in his feelings."

The self-possession which distinguished Romilly, and is mentioned in the text is an invariable characteristic of a truly great mind. Lord Chesterfield used to say of a person in a hurry that he plainly showed his business was too much for him. The Duke of Newcastle, commemorated in Humphrey Clinker, was always in a hurry. It used to be said of him, "that he had lost one hour in the morning which he was looking for during the rest of the day."

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## LAW LANGUAGE.

[Vol. II, page 48.]

In an old book entitled "A Preparative to Pleading," published in 1765, which was written by George Townsend, second prothonotary of the Court of Common pleas, remarks that "there is not a sufficient number of Latin words to express English words, there having been inventions of many things whereof not a few proper to this nation, since the Latin tongue flourished. And every art and profession," he adds, "have many coined words proper and peculiar thereunto; and so lawyers have necessarily framed to themselves words of law-latin for the more significant expression of things; as murdrum, for murder; manerium, a manor; acra, an acre—" He also observes that, "for want of fit Latin words, our predecessors have used somewhat gross Latin words, as tot virgat, ['*i. e.* totidem virgatas, so many yards;'] velvette, or de velvet, for velvet; curtina, a curtain; and English words only with de le, les or lez before them." Further on he remarks that, "there are four sorts of Lattin words; 1. Good Latin allowed by the grammarians. 2. Words significant and known by the sages of the law. 3. False or ill Latin or no Latin, and yet having the countenance of Latin. 4. Words insensible and of no signification and which have no countenance of law. He gives the following direction for the use of Latin in pleading, "Where are not elegant and proper Latin words to express things we must use barbarous words if they

be known; and where are no such, we may coin Latin words adding an *anglice*.

The following titles of a few chapters of a MS. work on chancery practice by Lord Keeper Finch (afterwards Lord Chancellor and Earl of Nottingham) will exemplify the jargon of English, Latin, and French, familiar to the lawyers of that day. "Chap. 6. Equity versus purchasor ne sera. Chap. 7. Equity relieves en plusors cases l'ou les printed livres deny it. Chap. 12. Of Trusts in general, quid siut. Chap. 30. De anomalies. Chap. 31. L'ou les judges del common ley ont agreed to alter it sans act de parlement: et l'ou nemy."

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## NULLUS CLERICUS, NISI CAUSIDICUS.

[Vol. II, page 145.]

That most accomplished Satirist, Piers Ploughman in his "Vision," writing at an early time, refers to the secular employment of the clergy common in his time, in the following words;

"Parsons and parish priestes plained* to the bishop
That their parishes ben poore, suthe† the pestilence' time
To have licens and leve in London to dwell,
And synge for symonie.‡ The wyle, silver is swete,
Bishop and bachelors, both maisters and doctors
That han§ cure and cryst and crownynge ben to kne
Ben chargid with holy church, charyte to tulie
That is leel love and lif. Among lered and lewed men
Thei leven in Londene in lentene and elles.
Some serven the king and his silver tellen
In the checkkere‖ and the chaunce live, chalengyng his dettes,
Of wardes and of wardemotes, waives and strayes
Somme aren as seneschals and serven of lordes,
And ben in stede of stywards."

* Complained. † Since. ‡ Saying Masses for Money
§ Have. ‖ Exchequer.

The pestilence referred to, is the awful visitation of 1350 which happened about twelve years before the date of this work, and which so greatly devastated the country, that in many parishes there were not left sufficient hands to till the earth; the clergy in this way lost their tithes, and many came up to London, some of whom officiated as chancery priests and others, we may readily believe devoted themselves to the secular occupations of the lawyer and the physician. The clergy, however, affected the civil law the most, and they attempted frequently to obtain the introduction of its provisions in lieu of those of the common law. From the fact that our chancellors were anciently ecclesiastics, we learn the reason why in our equity system so much of the civil law is apparent. Civil law was very early taught in England.

In 1140 Vicarius first read public lectures on the civil law at Oxford. He held a professorship which was founded by Theobald, a Norman ecclesiastic, who had obtained the archbishoprick of Canterbury. This prelate seems to have been fully sensible of the great advantages that would result to his order from the inoculation of the English people with the debasing principles of the civil law. Peter of Bloys, his chaplain, says, "in the house of my master are several learned men, famous for their knowledge of law and politics, who spend the hours between prayers and dinner on lecturing, disputing and debating causes. To us, all the knotty questions of the kingdom are referred, which are produced in the common hall, and each in his order, having first prepared himself, declares, with all the eloquence and acutenees in his power but without wrangling, what is wisest and safest to be done. And if God suggests the best opinion to the youngest among us, we agree to it without envy or detraction." [Epist. 6.] How near, observes a writer, was this introduction, by Frenchmen, of the Roman law fulfilling the predictions of the two Latin Poets:

JUVENAL. "Gallia causidicos docuit facunda Brittanos.
VIRGIL. "Romanos rerûm dominos gentemque togatum."

In the Reign of Richard II, the priory of Spalding in Lincolnshire, appears to have been adorned by a monk named Hugh Grull, famous for his knowledge of the law. The

Convent of Croyland, with whose monks this priory was first supplied, was famous for the legal attainments of its inhabitants—particularly as their abbot Ingulphus, who had been the chancellor of William the Conqueror, writes, for their knowledge of the English crown and canon law. Their stewards, proctors, and advocates were renowned. By this convent, the study of the law was particularly kept up. It is recorded that, in the reign of John, the priory of Spalding possessed a learned lawyer, who was also graduate, in the person of Godfrey, the Cellaras. In the reign of Henry III, the name of Henry le Moyne is recorded as an intimate friend of the vicar, who was a learned common lawyer and steward of the courts of Spalding Manor. He cast Lord Henry Longford abbot of Croyland, and Richard Bardney his successor, and Lord William de Alban a rich Baron, in the king's courts, on behalf of his tenants and vassals, for their rights of and to the spacious commons which they enjoy to this day. This prior, to whom Sir W. le Moyne was so great a friend, was named John de Spalding; he was a Doctor of Laws, and eminent for his knowledge of canon and other law. He was summoned to council by the king's writ, 49 Hen. III, 1200, and so highly was he esteemed as a lawyer that he was appointed one of the king's justices itinerant for the city of Essex. He seems to have been chief judge in the commission.

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## OUR STATUTE LAW.

[Vol. II, page 59.]

We have on more occasions than one, in this work alluded to the defects of our statute law, and the difficulty that exists of ascertaining its contents and of apprehending its principles. The Statute of Frauds, known to have been the result of the united labours of the most accomplished lawyers of the day, was the cause of so much litigation that it has been said to have been interpreted at the cost of £100,000.

We have already adverted to the confusion which pervades our written law. No doubt the house of commons were not a little surprised when they were told by Sir Mathew Ridley that if any one should desire to ascertain the enactions respecting the mode

in which petitions were to be transmitted to members of parliament he must search for them in "An Act for laying an additional duty on tea and coffee." Sir Robert Peel, in bringing forward his measure for his consolidation of criminal law adduced several instances of the necessity that existed for a revision of our statute code. Amongst these he mentioned an act which included within its operation a variety of objects having no apparent relation to each other. The title of the act was "an act for the better securing of the duties of customs upon certain goods removed from the out ports and other places to London; for regulating the fees of his majesty's customs in the province of Senegambia, in Africa; for allowing to the receivers-general of the duties on offices and employments in Scotland, a proper compensation; for the better preservation of hollies, thorns, and quicksets, in forests, chases, and private grounds, and of trees and underwoods in forests and chases; and for authorizing the exportation of a limited quantity of an inferior sort of barley called bigg, from the port of Kirkwall, in the island of Orkney."

There is nothing more thoroughly Irish than the old Irish acts of parliament: The 11 Eliz. stat. 3, ch. 1, by which as he is therein styled, "that caitife and miserable rebel, Shane Oneile," is attainted in an instance of this. In the recital a full history of the rebellion is given and the title of the kings of England to the possession of Ireland is thus learnedly deduced.—"It may like your most excellent majesty to be advertized that the auncient chronicles of this realm, written both in the Latin English, and Irish tongues, alledge sundry auncient titles for the kings of England to this land of Ireland. And, first, that at the beginning, afore the comming of Irishmen into the sayd land, they were dwelling in a province of Spain, called Biscan, whereof Bayon was a member and the chief citie. And at the said Irishmen's comming into Ireland, one king Gurmonde, sonne to the noble king Belan, king of Great Britain, which now is called England, was lord of Bayon, as many of his successors were to the time of king Henry the second, first conqueror of this realm, and therefore the Irishmen be the king of England his people, and Ireland his land. Another title, that at the same time that Irishmen came out of Biscay as exiled persons, in sixtie ships, they met with the same king Gurmond upon the

sea, at the yles of Orcades, then coming from Denmark with great victory, their captaines called Hiberus and Hermon went to this king and told him the cause of their comming out of Biscay, and prayed, with great instance, that he would graunt unto them that they might inhabit some land in the West. The king, at the last, by the advice of his counsel, granted them Ireland to inhabit and assigned unto them guides for the sea to bring them thither, and therefore they should and ought to bee the king of England's men."

The number of amending acts passed in every session for supplying the omissions and correcting the mistakes of the legislatures have long been a subject for ridicule. One session there was an act passed by which hackney coachmen were subjected to a penalty for not having a cheque-string, and afterwards an act was passed by which he was obliged to hold the cheque string. This reminds us of the old story of Lord Rochester's evading the intentions of the legislature by having, according to the provisions of the act, a lamp over his door but not having it lighted, the act containing no words to that effect. Sheridan used to compare amending bills to the interesting story of "the house that Jack built." "First comes a bill imposing a tax; then a bill to amend that bill for imposing a tax; then comes a bill to explain the bill for amending the bill imposing the tax; which would be followed by a bill for remedying the defects of a bill to explain a bill passed to amend a bill for imposing a tax, and so on ad infinitum."

The 17 Geo. III, c. 3, is for the prevention of abuses in worsted manufactures in the counties of York, Lancaster, and Chester. The 24 Geo. III, sess. 2, c. 3, extends the act to Suffolk, and the 31st Geo. III, c. 56, to Norfolk. According to this plan of legislation, if the worsted manufacture should hereafter prove prosperous we may have this long and intricate act ten or twenty times repeated, which a little foresight would have saved. The 17 Geo. II, c. 8, relates to the packing of butter, at New Malton, Yorkshire; a subsequent act to the packing of butter in the city of York, and we believe there is another relating to the same matter in Ireland. It is not easy to discover reasons for legislating on the packing up of butter at all; but it is still more difficult to discover why there should be two special acts on that subject for the City of York and town of New

Malton. A like criticism is applicable to the 31st Geo. II, c. 40, which prohibits brokers in hay and live cattle from buying and selling on their own account, which the 33 Geo. II, c. 27, extends to dealers in fish. With instances of this kind our statute books are rife. Under particular local acts the penalty of death was imposed for the commission of an act of trespass, which, in all other places, is held simply a civil offence, admitting of no criminal punishment whatever. Thus the 9 Geo. I, c. 22, commonly called "the Black Act," recites, that several ill-designing and disorderly persons had associated themselves under the name of Blacks, and, armed and disguised, had unlawfully harbored in forests and parks, robbed warrens and fishponds, cut down plantations of trees, and sent divers threatening letters; and then the act goes on to impose the punishment of death upon all found guilty of any of the offences contained in it. So highly did the legislature esteem the value of this act that it has frequently been excepted from other repealed acts as well as re-enacted, and was at last made perpetual by 31 Geo. II, c. 42.

As an instance that our law does not in every case deserve the character that has been given it of being no respecter of persons, and that it extends to the rich a protection it denies to the poor, we may refer to 31 Eliz. c. 9, by which it is made a capital offence to take away women *having substance*, or who are *heirs apparent*, and afterwards to marry them against their will.

In former times our legislature certainly displayed a most thorough contempt for the principle which has been so often asserted by French philosophers. "Une loi rigoreuse produit des crimes." Our statute law is in this respect strangely contrasted with our common law which is for the most part strikingly merciful and clement.

One Roos, cook to the Bishop of Rochester, put some poison into a pot of broth. Of this broth several of the bishop's household freely partook; and in consequence one of them died. The rest of the broth having been, with charitable intentions given away, several other persons suffered, and one poor woman lost her life. Upon this, an act was passed, which, in barbarity, was inferior only to the crime itself—the 22 Hen. VII, chap. 9, by which, after reciting the offence of Roos, it is enacted that he be declared guilty of high treason and *boiled to death*, and that

all future prisoners be treated in the same manner. This act was repealed by the 1 Edward VI, c. 12. By the 1 Jac. I, c. 8, it was enacted that any one, stabbing another whose sword is not drawn, or who has not struck him, should be adjudged to have committed a felony without benefit of clergy. This act was made to continue only until the end of the first session of the next parliament. It expired on the 12 Jac. I, but was revived 21 Jac. I, c. 28, and continued in existence some time.—It was made says Blackstone, on account of the frequent quarrels and stabbing with small daggers between the Scotch and English, at the accession of James I. It is a very remarkable circumstance that the act 9 Geo. IV, c. 31, positively revived this act, which had in fact expired 225 years before. For the first clause of that act recites the 1 Jac. I, c. 8, and declares that it, with others, should be in force until the last day of June, and then be held repealed, except as to offences committed on or before the last day of June. The draftsman evidently was not aware that the act had expired. The absurdity of this act is, that it directed an offender to be put to death, not because he killed his adversary: he did it with *one* sort of weapon. When Sir Robert Peel brought in his forgery bill, he alluded to the extensive forgeries committed upon Mr. Gibson, M. P. by a person named Haley, and which led to the sanguinary enactments against a crime that under the common law was simply a misdemeanor. The fact is that our criminal laws were all framed for occasions and not suggested by any philosophical consideration.

Speaking of the shop-lifting act, Sir W. Merredith observed—"Under this act one Mary Jones, was executed, whose case I shall just mention: It was at the time when press warrants were issued on the alarm about Falkland Islands. The woman's husband was pressed, their goods seized for debt, and she with two small children turned into the streets a begging. 'Tis a circumstance not to be forgotten that she was very young (under nineteen,) and most remarkably handsome. She went to a linen draper's shop, took some coarse linen off the counter and slipped it under her shawl. The shopman saw her as she laid it down. Her defence was, that she had lived in credit and wanted for nothing until a press-gang came and stole her husband from her; but since then she had no bed to lie on, nothing to give her chil-

dren to eat, and they were almost naked, and perhaps she might have done something wrong for she hardly knew what she did. The parish officers testified to the truth of this story. But it seems there had been a good deal of shop-lifting about Ludgate Hill; an example was thought necessary; and this woman was hanged for the comfort and satisfaction of some shopkeepers in Ludgate Street. When brought to receive sentence, she behaved in such a passive manner as proved her mind to be in a distracted and desponding state; and the child was sucking at her breast when she set out for Tyburn gallows." The law under which this poor woman was executed was an act 3 Will. & Mary, c. 9, which enacts that a person who shall steal out of any shop, goods to the value of five pounds shall suffer death.—When a proposition was made to repeal this bill, Lord Ellenborough intreated the house to pause ere they consented "to hazard an experiment pregnant with danger to the security of property;" assuring them of his conviction "that it had not produced the smallest injury to the merciful administration of justice."

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## THE JUDGES.

[Vol. II, page 125.]

Mr. Horne Tooke observed, respecting the 1 Geo. III, c. 23, "I do not believe the dependence of the judges on the court was so great formerly as at present. I believe the judges then were less dependent on the crown and more dependent on the people than they are at the present hour. The judges then sat on the bench, knowing that they might be turned down again to plead as common advocates at the bar, * * and character and reputation were of more consequence to the judges than they are now. They are now completely and for ever independent of the people and have every thing to hope for from themselves and families from the crown."

There is a passage in the description of Achilles' shield in the Iliad in which two talents of gold, are described as placed between two judges to be paid to the best speaker. This pas-

sage has been often quoted to prove that, even during primitive times, the judges were remunerated for their administration of justice, but Mr. Mitford has contended that the two talents were not intended to represent a recompence for the judges, but were in truth, the property in dispute. In the Paston letters of the date of Henry VI, there is the following curious account of the manner in which the law was administered. It is in a letter addressed to Sir John Falstaff. "This knowing, my master Yelverton, Jenney, and others might well conceive for the governance of oyer and terminer, should proceed, for it [Walsingham] was the most partial place of all the shire, and thither are classed all the friends, knights, and esquires, and other gentlemen, that would in no wise do otherwise than they would, and the said Jodenham, Heydon, and other oppressors of their set, came down thither, as I understand, with 400 horse and more, and considering how their well willers were there assembled at their instance, it had been right jeopardous and fearful for any of the plaintiffs to have been present, for there has not been one of the non-complainants there, but your right faithful and trusty well willer John Paston." "Here we find" as Sir John Fenn observes, "those in the highest department of the law openly partial, and that the suitors in the court came attended by large parties of friends in military array, to drive away their opponents; from this the wisdom of our present regulation is apparent when all the soldiers are ordered to quit the town when the assizes are holden during the time of their continuance, lest it should be supposed they might be a friend to one and intimidate the other party in any legal process; this proceeding is now always enforced unless when any daring offender against the law is to be tried and there are any apprehensions of an intended rescue."

By the laws of Edgar, any judge who should make an unjust decree was compelled to pay a fine to the king of one hundred and twenty shillings, unless he should swear that he knew how more justly to have decreed. Alfred made a law by which an unjust judge, after making recompence to those who had suffered by his ignorance or corruption, forfeited his goods to the king. After the capture of Jerusalem by the Crusaders at one of the general assemblies held in the city, the great lords drew up a code of laws which are called "Les Assizes de Jerusalem,"

and which forms the most complete digest of feudal jurisprudence. In this, there is an article by which the losing party had a liberty afforded him; questioning the decision of the court. But whoever availed himself of this privilege was obliged to *fight all the persons composing the court, not merely the judges but the suitors one after another.* It is not likely under these circumstances that the privilege would often be exercised.

In the minority of Richard II, the administration of jusiice was very corrupt. Amongst the articles of impeachment sent up by the Commons against Michæl de la Pole,* was one charging him, together with the Archbishop of York and De Vere, who had been created Duke of Ireland, with having sold their influence over the judges to suitors, and with having put the great seal to illegal pardons. By the 8 Richard II, cap. 2, it is therefore provided that no one shall be judge of assizo or gaol delivery in his own county,† and, by the third chapter, it is enacted, that no judge shall receive presents from any one except victuals or drink and those *of a very small value.* At a time when county markets were not quite so well supplied as at present, this exception was only reasonable. Andrews tells us that in the 13th century the judges excused themselves from holding a court of Eyre in Cornwall. "*Si veniamus ibidem macras genas reportabimus.*" If we should go thither we should bring back lanthorn jaws."

The following is a dialogue said to have taken place between Stephen Gardner, Bishop of Winchester and Chanceller of England, and Judge Hales, who had proved his fidelity to Queen Mary, by refusing to join in the attempt‡ the Duke of Northum-

* Rob. Parl. iii, 216.

† According to Barrington, Du Halde, in his large work on China informs us, that no mandarin can declare any law-suit in the province in which he was born.

‡ The order for declaring Lady Jane Grey, Queen of England, was, according to Fox, subscribed by "all the king's counsel and the chief of the nobility, the mayor and city of London, and almost all the judges and chief lawyers of this realm, saving only Justise Hales of Kent, a man both favoring true religion and also an upright judge as any hath been noted in this realm, who giving his consent unto Lady Mary would in no case subscribe to Lady Jane."

berland made to prevent her accession to the throne. Hales in spite of his loyalty was a Protestant, and it was this that excited the ire of the queen.

The following is a dialogue reported to have been held between Judge Hales and the Lord Chancellor.

"Master Hales, ye shall understand that like as the queen's highness hath heretofore received good opinion of you, especiallie, for that ye stoode both faithfullie and laufulli in hir cause of just succession, refusing to set your hande to the booke among others that were against her Grace in that behalf: so nowe through your own late desertes, against certain her Highness dooinges ye stand not well in her Grace's favor. And therefor, before ye teke anie othe, it shal be necessarie for you to make your purgation.

*Hales.*

I praie you, my lorde, what's the cause?

*Chancellor.*

"Information is given that ye have indicted certain pristes in Kent, for saying of Masse.

*Hale.*

"Mi lorde, it is not so. I indicted none but indeede certaine indictameantes of like matter wer brought befor me at the last assizes there holde, and I gave order therein as the lawe required. For I have professed the law, against which in cases of iustice wil I neuer, God willinge, procede, nor ani wise dissemble, but with the same shewe forth mi conscience, and if it were to do againe I wolde doe no less then I did.

*Chancellor.*

Yea, Master Hales, your conscience is knowne well enough; I know ye lacke no conscience.

*Hales.*

"Mi lorde, ye maiod wel to serch your owne conscience, for mine is better known to mie selfe than to you, and, to be plaine, I did as well vse iustice, in your said masse case, by mi conscience as bi the law, wherein I am fulli bent to stand in trial to the uttermost that can be obiected. And if I have therein done ani iniiri or wrong let me be iudged by the lawe, for I will seeke no better defence, considering chiefli that it is mi profession.

"Whi, Master Hales, althoughe ye had the rigor of the law on your side, yet ye might have hadde regard to the Quene's

Highness present doings in that case. And further although ye seme to be more than precise in the lawe, yet I thinke ye wolde be veri loth to yelde to the extremitie of such advantage as might be gathered against your proceedings in the lawe, as ye have sometyme taken vpon you in place of iustice. And if it were well tried, I believe ye should not be wel able to stand honestli therto.

*Hales.*

"My lord i am not so perfect, bet i mai erre for lacke of knowledge, but both in consciense and such knowledge of the lawe as God hath given me, i wil do nothing but i wil maintain and abide in it. And if my goodes and all that i have be not able to counterpoise the case, mi bodie shall be redi to serue the same, for thei be all at the Quenes Highnesse pleasure.

*Chancellor.*

"Ah sir, ye be veri quick and stout in your answers. But, as it should seme, that which ye did was more of a will, favoring the opinion of youre religion against the service nowe used, then for ani occasion or zeal of iustice, seeing the Quene's Highness dooth set it forth, as yet wishing all her faithful subiects to embrace it accordingli, and where ye offer both bodie and goodes on your trial, there is no such service required at your handes and yet ye shall not have your own will neither.

*Hales.*

"My lord I seke not wilful will but to shew myself as i am found in love to God and obedience to the quenes majestie in whose cause willingly for iustice sake (al other respectes set apart) i did of late (as your lordship knoeth) adventure as i had And as for my religion i truest it to be suche as pleaseth God whin i am redy to aduentnre as well my life as my substance, if i be called thereto, and so in lacke of mine own power as will the Lordes will be fulfilled.

*Chancellor.*

"Seeing ye be at this point, Master Hales, i will presently make an end with you. The Queen's highness shall be enfourmed of your opinion and declaration. As hir Grace shall thereupon determine, ye shall have knowledge: until such tyme ye may depart as ye came, without your othes, for, as it appeareth, ye are scarce worthi the place applied.

*Hales.*

"I thank your lordship, and as for my vocation, being both a burden and a charge more than ever, i desire to take upon me, whensoever it shall please the Queen's Highness to ease me thereof: I shall, most humbli, with due consideration, obei the same.

"And so he departed from the barre."

This dialogue is extracted from a pamphlet, called "The Communycation between my Lord Chancellor and Judge Hales, being among other judges to take his oath in Westminster Hall."

Hales was, after this, committed to prison, where the warden endeavored to convert him by terror, telling him of the terrible punishments reserved for obstinate heretics. This terrified him so much, that he endeavored to commit suicide by stabbing himself with a knife; but not succeeding in putting an end to his life, he reluctantly "said as they willed him," and was, thereupon discharged. Shortly afterwards he drowned himself in a river near Canterbury.*

* We all remember the remarkable dialogue between the clowns in Hamlet.

"If I drown myself wittingly" wisely observes one, "it argues an act; and an act hath three branches, it is, to act, to do, and to perform: Argal she drowned herself wittingly. Here lies the water; good: here stands the man; good. If the man goes to this water and drown himself, it is, will he, nill he, he goes; mark you that, but if the water comes to him and drown him he drowns not himself! Argal, he, that is not guilty of his own death, shortens not his own life." The other clown asks "But is this law?" "Ay, marry is't" is the reply; "Crowner's quest law." It would seem that after Hales' death, a question arose whether by his suicide a lease which he held under the Dean and Chapter of Canterbury, did not forfeit to the crown. In the arguments used in the trial, much subtilty was exhibited in ascertaining the fact whether Hales was agent or patient, and this are supposed to have suggested to Shakspeare the language he has put iuto the mouth of his clown.

"The felony," says Mr. Justice Brown "is attributed to the act, which act is always done by a living man in his life time. Sir James Hale was dead, and how came he to his death? It may be answered by drowning; And who drowned him? Sir James Hale: And when

It was a custom commonly pursued in former times for the commons when anxious to redress any grievance, under which they or their constituents might be suffering, to petition the king and great council for remedy, and their petition and the king's answer were inscribed together on the parliament roll. If the king's answer was in the affirmative, the substance of the petition was afterwards drawn up in the form of a statute by the judges. A remnant of this manner of making laws is perceived in all acts granting a supply, which always appear in the form of a petition. It would seem that the judges very often abused the extensive powers thus so imprudently entrusted to them.—The first two of the intolerant statutes which have disgraced our statute book, it has been well remarked, are instances of this abuse. An *ordinance* was inscribed on the Roll in the 5th of Richard II, empowering sheriffs of counties to arrest preachers of heresy. "This" says Sir F. Dwarris "was introduced into the statutes of the year." Upon this, the commons made a declaration in which after reciting this ordinance, they say, "that it was never assented to or granted by them, but what had been proposed in this matter was without their concurrence and pray that the statute be annulled, for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in time past." In this way the act of the 2 Hen. IV, against heresy, crept into the statute book—It was founded upon a petition not of the commons, but of some rancorous and bigotted priest.

In the famous act 36 E. 3, Stat. I, c. 15, respecting law proceedings, the words "and that they be entered and enrolled in Latin," were inserted, though not in the petition.

The judges told Charles I, before he assented to the petition

did he drown him? in his life time. So that Sir James Hale being alive, caused Sir James Hale to die; and the act of the living man was the death of the dead man. And then for this offence it is reasonable to punish the living man who committed the offence, and not the dead man. But how can he be now said to be punished alsoe, when the punishment comes after his death? Sir, this can be done no other way than by devesting out of him from the time of the act done in his life, which was the cause, the title and property of those things which he had in his life time."—*Hales v. Petit, Plowd. o.* 262.

of Right, "that there was no fear of his being concluded by it, as the cases must be left to them to determine." C. J. Kelynge called Magna Charta, Magna F——a." Baron Weston in charging a jury in 1680, said, "Nothing will serve them the people but a parliament, for my part I know no representative of the nation but the king; all power centres in him." "What," says Andrew Marvel, "standing forces, what parliamentary bribes could not effect, was more compendiously acted by twelve men in scarlet." Lord Clarendon condemns the practice the judges then so generally pursued, in which "reasons of state were urged as elements of law." He censures the judges for being as sharp sighted as secretaries of state, and in the mysteries of state and judgments of law grounded on matters of fact, of which there was neither inquiry nor proof. He declared that is "no possibility to preserve the dignity, recoverence and estimation of the laws themselves but by the integrity and innocency of the judges."

To show the influence of the crown in legal causes in former times we may mention that Queen Elizabeth received from Sir J. Harrington, her godson, a present of a valuable jewel, worth £500, for her majesty's influence, "with some of hor lernede counsele," in a suit then pending for the purpose of recovering some land forfeited by one of his ancestors, who espoused the cause of Richard III.

When Pitt, in 1759, brought forward his measure for extending the *habeas corpus* he discovered that the great body of the judges were unfriendly to it. When the time for fixing their salaries came, the Duke of Newcastle was told by the minister that, "the increase in their salaries had been made to reward them for their complaisance on the bill of Habeas Corpus, and that *it was the largest fee ever given*." This alarmed the Duke so much that he persuaded a member of the commons to drop a bill which he had introduced for converting the judges' commissions during good behaviour, into patents for life. When the increased salaries came under discussion in the house of commons they were severely attacked, "and," says Lord Orford "a Mr. Coventry told many entertaining stories of the judges and their rapaciousness upon the circuit and of casual presents which they had converted into standing usages." The motion, however, was carried by 169 to 39, which occasioned Charles

Townsend to say "that the Book of Judges had been saved by the Book of Numbers."

Mr. Justice Ashurst in an address to the jury at Warwick on the trial of one Binns for libel, in 1797, said "that it would not only be commendable but the bounden duty of every man to take arms and resist the attempts of the executive power, if it strove to wrest from the people the liberty of the press and the trial by jury."

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## MURDER OF A MASTER IN CHANCERY.

[Vol. II, page 136.]

In the reign of James the First, we find an instance of a master in chancery's being murdered by an unfortunate suitor. The following account which we consider to be well deserving, a perusal, is extracted from a pamphlet entitled "A True Relation of a most desperate Murder, committed upon the body of Sir John Tindall, Knight, one of the maisters of the chancery, who with a pistoll charged with three bullets was slaine going into his chamber, within Lincoln's Inn, the 12th day of November, by one John Baterham, Gent."*

Baterham is described as a man "so stricken in age, that so much haire as was upon his head, (it being exceedingly bald) with a long and comlie beard, was all turned white for threescore and ten years at least, sat upon his stooping shoulders.— His dwelling was at Westminster, his living had been goode in former times, but when it was at best, it was by him weakened, wasted, yea, and almost utterlie consumed in tedious and expensive suites of law in which the cunning he had got by experience made him more covetous in prosecuting of such contentions. A long time had he suites depending in the chancerie, in which the law not running with so even and calme a streame as hee did expect or persuade himselfe, that the justice of his cause did deserve, one Sir John Tindall (one of the masters of chancerie, a man grave for his age, reverend for his wisedome,

* Lond. 1617.

knowledge, and authoritie,) giving and awarding this Michael-mas Term by a certain report (having had the hearing of this businesse for Baterham as of others for him before) a summe of money to the value of 300 markes or £300 or thereabouts, as a full satisfaction, yet Baterham being of a haughtie turbulent and disdainful spirit, full of rage, fury, and headlong indignation; propounding to himself that Sir John Tindall was the only calthorpe thrown under his feete to pricke him and cast him down, sealed a damnable vow betwixt hell and his soul to be revenged onlie there, where (to his judgment) hee found his injuries to stick, and therefore as his state, he said, was confounded by Sir John Tindall, Sir John Tindall should be by Barterham confounded likewise in his. The meanes to make this vengeance sure, much tossed and troubled his working cogitations, and after many hammers beating on that damnable anvil, at last the devil (a ready schoolmaster to a quick scholar,) stood whispering in his ear, the word, *report*, *report*, &c. Upon which, starting out of his melancholy thoughts, it did him good at heart, to think, that as he found himself undone by the report of a lawyer's pen, so new, by another report of his own devising, he should overthrow the lawyer.***Having provided himself with a pistol and loaded it with three bullets, he went to Westminster, where however the concourse of people prevented his carrying his design into execution.***But, however, he followed close to the old knight, until he came to Lincoln's Inn, where alighting from his coach and spying Baterham, who (according to his custom and vexation of spirit) growing into uncivil language with Sir John, upbraiding him to be the utter undoer of him and his, and crying after him even to the knight's door for new compromise, and a great deal of frantic talk, which Sir John slighted, bidding him to trouble him with his clamors no more. At this, in disdain, to be so cast off Barterham out with his pistol, shot and killed him, his last farewell to the world being only a deep-fetched groan."

## THE BENCH AND THE BAR.

[Vol. II, p. 154.]

The authority of the bench over the bar is involved in some doubt. By the Statute of Westminster (3 Edw. I, c. 29,)* it is enacted that any serjeant counter or other who is guilty of "any manner of deceit or collusion in the king's court should be imprisoned for a year and a day, and thenceforth should not be heard in court for any man." Within the terms of this act, barristers are included. (2 Inst. 211.) Lord Hardwicke, when chancellor, committed a barrister to prison for having assisted in the abduction and marriage of a ward of court. In his petition for release the barrister expressed his willingness to be restrained from practising at the bar. In giving judgment, Lord Hardwicke expressed a doubt as to the proper way of removing a practising barrister. In a note to the case reported, it is said that the individual was disbarred; but this fact does not determine the point, as he had himself offered to abandon the bar.—Lord Wynford has said that "in England courts of justice are relieved from the unpleasant duty of disbarring advocates in consequence of the power of calling to the bar, and *dis-barring's* having been in very remote times, delegated to the inns of court. Although our own courts do not disbar for the reason I have mentioned, I have no doubt they might prevent a barrister who had acted dishonestly from practising before them.†" The term "disbarring," appears to be in practice limited to "silencing in the courts." Upon proof given of the commission of any offence by a barrister being a member—as it is necessary for all barristers, in the first instance, at least, to be—of an inn of court, his name is removed by the benchers from the books of their Inns. In the exercise of their discretion, the judges might, and undoubtedly would, refuse to hear a person so removed; but whether he would not still continue a *barrister* in the intendment of the 41 Geo. III, c. 98, s. 14, and be entitled to draw plead-

* See page 213.

† In re the Justices of the court of Common Pleas at Antigua. Knapp. 267.

ings and exercise all the privileges appertaining to a barrister, appears to us very doubtful.

We have in the text alluded to the dignity of demeanor which should characterise the bench in its intercourse with the bar. Chief Baron Parker, though a very honest and very learned man, was a very undignified judge. When he was delivering his opinion in the course of Perrin *v.* Blake, he exclaimed in a loud tone, "Stare decisis," and gave his desk so severe a rap with his knuckles that the court rung again. Lord Camden used frequently to sit in court in a tie wig, and would garter up his stocking while the counsel were the most strenuous in their eloquence. Lord Clare, the Irish chancellor, had a favorite dog that would often follow him to the bench. One day, during an argument of Mr. Curran's, his lordship stooped down and began to caress the dog. Curran stopped short in the middle of a sentence—the judge started. "I beg pardon, my lord," said the advocate sarcastically, "I thought your *lordships* had been in consultation; but as you have been pleased to resume your attention, allow me to press upon your excellent *understandings*, that," &c.

Mr. Cradock mentions having had, while acting as sheriff in the room of a friend, to receive at Leicester, Mr. Justice Gould and Mr. Baron Hotham. As soon as he was seated with them in the coach, Mr. Justice Gould said to him, "We set out so early from Derby this morning, that we did not receive any letters or public accounts; has any news arrived at Leicester from America?" "None that is good, I fear, my lord; there seems to have been some disaster in the expedition to the Chesapeak." "Has there," exclaimed the judge hastily, "that is exactly what I feared and expected." "And pray," cried Baron Hotham, warmly, "why did your lordship particularly fear and expect some disaster in the Chesapeak? Was it because my brother was the leading admiral on that station?" "Upon my heart," replied Mr. Justice Gould, "that circumstance never occurred to me, or I should not have so expressed myself." Mr. Baron Hotham, however, did not appear at all satisfied, and the journey to Leicester was very uncomfortable in consequence. When they arrived at the judge's lodgings, the under sheriff whispered to Mr. Cradock, "For heaven's sake, what has been the matter? I rode close to the side of the

window that was open, in order to prevent the altercation's being heard; but this was impossible." On this, Mr. Cradock followed the judges into their lodgings, and declared to them that he had never felt so uneasy in his life, as he had been the unwitting cause of the quarrel, and begged the learned baron to be reconciled to his brother. This speech had the desired effect, and harmony was once more restored.

The following dialogue took place not very many years ago, between a learned serjeant and a learned baron of the exchequer, while on circuit. When the serjeant entered the court, one morning, the judge said in a sharp tone, "Brother, you are late—the court has waited a considerable time." "I beg your pardon, my lord," answered the serjeant, "I was not aware that your lordship intended sitting so early; the instant I heard your lordship's trumpet I dressed myself." "*You were a long time about it*, brother." "I think, my lord, not twenty minutes." "Twenty minutes, Mr. Serjeant! *I was ready in five minutes after I left my bed.*" "In that respect," returned the serjeant, "my dog, Shock, distances your lordship hollow; he only shakes his coat, and fancies himself sufficiently dressed for any company."

We detail the following *fracas* as it is probably new to many of our readers. It occurred in the court of Common Pleas on the trial of Thurtell *v.* Beames. Mr. Serjeant Taddy was examining a witness and asked him a question respecting some event "that had happened since the plaintiff had disappeared from that neighborhood." The late Mr. Justice Parke immediately observed, "That's a very improper question and ought not to have been asked." "That is an imputation," replied the Serjeant, "to which I will not submit. I am incapable of putting an improper question to a witness." "What imputation, Sir?" inquired the judge angrily. "I desire that you will not charge me with casting imputations. I say that the question was not properly put for the expression 'disappear' means 'to leave clandestinely.'" "I say," retorted Serjeant Taddy, "that it means no such thing." "I hope," rejoined the judge, "that I have some understanding left, and, as far as that goes, the word certainly bore that interpretation, and therefore was improper." "I never will submit to a rebuke of this kind." "That is a very improper manner, Sir, for a counsel to address

the court in." "And that is a very improper manner for a judge to address a counsel in." The judge rose and said with great warmth—"I protest sir, you will compel me to do what is disagreeable to me." "Do what you like, my Lord." "Well," said Mr. Justice Parke, resuming his seat, "I hope I shall manifest the indulgence of a Christian judge." "You may exercise your indulgence or your power in any way your Lordship's discretion may suggest; it is a matter of perfect indifference to me." "I have the functions of a judge to discharge, and in doing so I must not be reproved in this sort of way." "And I," replied the undaunted Serjeant, "have a duty to discharge as counsel, which I shall discharge as I think proper without submitting to rebuke from any quarter." Anxious to terminate this dispute in which the dignity of the court was compromised, Mr. Serjeant Lens rose to interfere. "No? brother Lens," exclaimed Mr. Serjeant Taddy, "I must protest against any interference." Serjeant Lens, however, was not to be deterred from effecting his intention, and addressing the Bench, said, "My brother Taddy, my Lord, has been betrayed into some warmth—" here he stopped, by Serjeant Taddy seizing him and pulling him back into his place. "I again," he exclaimed, "protest against any interference on my account—I am quite prepared to answer for my own conduct." "My brother Lens, Sir," said Judge Parke "has a right to be heard." "Not on my account. I am fully capable of answering for myself." "Has he not a right to possess the court on any subject he pleases?" "Not while I am in possession of it," retorted the undaunted advocate, "and am examining a witness.' 'Mr. Justice Parke, then seeing evidently that the altercation could not be advisedly prolonged, threw himself back into his chair and was silent.

We have already expressed our opinion that, in modern times, the distance between the bench and the bar, is too rigorously maintained, and that the mutual intercourse and interchange of civilities which has been sacrificed to an apprehension lest the charge of favoritism should be brought has been unwisely given up. We should be, indeed, sorry to see the old system of patronage restored—nothing could be conceived which would prove more injurious to the purity of the bench and the independence of the bar—but what we would wish to see restored, is that reciprocation of kindly feelings which would neither lower the

dignity of the judge nor diminish the respect of the bar, but simply increase the harmony, and, therefore, the efficiency of both. Lord Mansfield was in the habit of favoring with particular notice, Fielding, the son of the novelist. One day, his lordship asked him for a pinch of snuff, and Fielding gave him a box containing Lundy-foot, instead of one which held French Rappee. Lord Mansfield, who was not a regular snuff-taker, took so large a pinch that he was nearly suffocated. "Why, Fielding," he exclaimed, "what *have* you given me? I have nearly poisoned myself!" "I humbly beg your lordship's pardon," replied Fielding, "I did not know you disliked *Irish black-guard*." "Why really you don't say you have any thing about you, that would come under that denomination?" rejoined Lord Mansfield. "Pardon me, my Lord," returned Fielding, "I generally keep it for the accommodation of the bench." "Pshaw," said his lordship, "the joke would have been a good one had it not gone down my throat. I say Fielding, let me be excused from these accommodations for the future." When Fielding made his debut in court, he was put completely at ease, by Lord Mansfield's addressing him in a good-humored and encouraging tone—"Well, *Tom Jones*, let us hear what you have got to say." Sir Thomas Plumer at the time he was a junior at the bar, and before his merits had become known, was engaged in a sessions case with Sir John Davenport. Whenever he arose to address the court, his senior recollected as he said, some argument which had previously escaped his memory, and interrupted the speech of the young advocate. After this had happened two or three times, Lord Mansfield said "Sir John, Mr. Plumer appears desirous to say something; pray let us hear him!" Dr. Plumer upon this addressed the court so effectively that much of his after success may be ascribed to his efforts upon that occasion. Lord Kenyon, too, was remarkable for the kindly manner with which he conducted himself towards the bar. At a time when Garrow was comparatively unknown in the profession, he was arguing before the court in a manner any thing but convincing or satisfactory. "Oh, Mr. Garrow," said the chief justice "do not pursue that, you were made for better things." Garrow, when he had attained to the first rank amongst our advocates, once interrupted a question put to a witness by Best (now Lord Wynford,) who was

then in the commencement of his career.—"That is not evidence," said he. "No," said Lord Kenyon mildly, "it is not evidence as it stands; but Mr. Best is a very sensible young man, and we must trust that he will follow it up with other questions that will make it evidence." Mr. Justice Bayley, while on the northern circuit was one day summing up to a jury, when he was very much disturbed by Mr. Gray, son of a late Bishop of Bristol, who was talking in court with another counsel rather loudly. The judge gently reproved the offender by saying to him, "Mr. Gray, if ever you arrive here, which some of these days I hope you will do, you will know the inconvenience of counsel's talking while you are summing up."

In Scotland the distance between the bench and the bar seems less respected than in England—and an intermutual change of familiar jokes seems to be or at least to have been practised in their courts, which would appear indecent and unseemly in Westminster Hall. Mr. Roscoe relates an anecdote of a great Scotch lawyer, as renowned for his wit as for his learning (probably Mr. Henry Erskine,*) pleading before a judge with whom he was on the most intimate terms. Happening to be retained for a client of the name of Tickle, he commenced his speech, "Tickle my client, the defendant, my lord,"—he was interrupted by a laugh in court which was immediately increased by the Judge's exclaiming—"Tickle her yourself, Harry, you are as able to do so as I am." Only concieve an English judge doing what Lord Kaimes is said to have done while on the circuit at Perth! After a witness on a capital trial had given his evidence, his lordship said to him, "Sir, I have one more question to ask you, and remember you are upon your oath. You say you are from Brechin?" "Yes, my lord." "When do you return thither?" "Tomorrow my lord." "Do you know Collin Gillies?" "Yes, my Lord, I know him very well." "Then tell him that I shall breakfast with him on Tuesday morning."

* Henry Erskine was famous as a humorist. Having succeeded in a cause in which his clients—a large coal company, were greatly interested, they invited him to a grand dinner they gave to commemo- their good fortune. The chairman having called on Erskine, for a toast, he gave them the following sentiment—"*sink* your pits, *blast* your mines, *dam* your rivers."

. . . there is nothing more contemptible than the manner in which some advocates have obtained business, by courting the Judges. . . .

"In circuit practice," says Roger North, "There is need of an exquisite knowledge of the judges humor as well as his learning and ability to try causes; and his lordship (Lord Keeper Guildford) when at the bar was a wonderful artist at nicking a judge's tendency, to make it serve his turn, and yet never failed to pay the greatest regard and deference to his opinions, for so they get credit; because the judge for the most part thinks that person the best Lawyer that respects most his opinion. * * I heard it creditably reported of Serjeant M—y—d [Maynard] that being the leading counsel in a small fee'd cause would give it up to the judge's mistake and not contend to set him right, that he might gain credit to mislead him in some other cause in which he was well fee'd." To have obtained the ear of the court, is a sure passport to business—Lord Clare the Irish Chancellor having quarrelled with Curran, took care to let it be understood the obnoxious advocate had no longer "the ear of the court," the consequence was that no solicitor would ever entrust Curran with a brief in a chancery cause—His immediate loss in this way he computed at £1000 a year, and would say, that, as his practice in chancery was rapidly increasiug, his total loss could not have fallen short of $20,000.

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## JAMES I, AND IGNORAMUS.

[Vol. II, p. 184.]

The comedy of Ignoramus, in which the law and the legal profession were severely satirised, was written by George Ruggle, a Fellow of Clare Hall. It is supposed that he took for his model a comedy of Giambattista Porta, called "La Trappolaria,"—the plot was undoubtedly borrowed from this play, but there is nothing in the resemblance which would entitle us to impugn the originality of its design.

"The king this year," says Roger Coke, "about the beginning of March, 1614-15, according to his usual method, went to

take his hunting pleasures at Newmarket; and the scholars, as they call them, of Cambridge, who knew the king's humor, invited him to a play called Ignoramus, to ridicule, at the least the practice, of the common law. Never did any thing so hit the king's humor as this play did, so that he would have it acted and acted again; which was increased by several additions, which yet more pleased the king. At this play it was so contrived, that George Villiers should appear with all the advantages his mother could him forth; and the king, so soon as he had seen him, fell into violent admiration of him, so as he became confounded between his admiration of Villiers and the pleasures of the play, which the king did not conceal, but gave both vent upon several occasions." There were many, however, that looked with serious apprehensions to the effect of thus involving in ridicule the legal profession. "If gowns," says quaint old Fuller, "begin once to abase gowns, cloaks will carry away all. Besides, of all wood, the pleader's bar is the worst to make a stage of; for, once in an age, all professions must be beholden to their patronage.*" The king was so delighted with the play, that he was anxious to see it again, and endeavored to induce the players to come to London for the purpose of again performing it before him; but finding himself unable to induce them to do so, he resolved on a second visit to Cambridge, where he arrived on the 13th of April. "On Saturday last," writes Chamberlain, to a friend, "the king went again to Cambridge to see the play, Ignoramus, which hath so nettled the lawyers, that they are almost out of all patience; and the lord chief justice [Coke], both at the King's Bench and divers other places, hath galled and glanced at scholars with much bitterness; and there be divers Inns of Court men have made rhymes and ballads against them which they have answered sharply enough: and to say truth, it was a scandal rather taken than given; for what profession is there wherein some particular persons, may not be justly taxed, without imputation to the whole? But it is the old saying, "conscius ipse sibi;" and they are too partial to think themselves so sacro-sancti that they may not be touched."

* Of players, says Hamlet, "After your death you will better have a bad epitaph, than their ill report while you live.

The [illegible]ts, however, were careful to assure the king that folly [illegible] some [illegible]urdity were not peculiar to the common lawyers, but that even the bookish theorique could be guilty of extravagance as laughter provoking. The physic act, which was performed before his M[illegible], was by his own desire "anent witchcraft," or as it runs in an old poem commemorating his visit—

> "——Was by the king's appointment
> To speak of *spells and magic ointment.*"

The subject of the philosophy act was no less important and instructive; it being, *whether dogs could make syllogisms*, a question naturally suggested by the circumstances that the king loved logic and hunting, and was therefore competent to judge respecting a point so doubtful. To "Ignoramus," many were the replies and retorts that appeared. It is said that Selden wrote his History of Tythes, in which he proves them to be due *jure humano*, and not *jure divino*, simply to avenge the insults which, in the person of Mr. Ruggle, the clergy had heaped on the law. But Fuller observes that he "cannot suspect so high a soul of so low reflections, that his book related at all to this occasion; but only that the latitude of his mind tracing all paths of learning, did casually light on the road of this subject." Robert Callis, of Gray's Inn, afterwards a serjeant-at-law, when he was Lent Reader, published his reading under the title of "The Case and Argument against Sir Ignoramus of Cambridge," in which he states a supposition law case, in order to determine in which of six persons the right existed of presentation to a church in a feigned vacancy. In this, he introduces one Sir Ignoramus, who is presented by the University of Cambridge, and whom he thus describes: "Sir Ignoramus, intended for the Universities Catacoustichon, a general noted coxcomb, a resemblance of the actor, which they bestowed on the Innes of Court, Ignoramus."

We may well believe that the comedy of Ruggle was intended to satirise, not only the barbarous tongue in which the law was written, but also the pedantry of many lawyers who used its rude and discordant terms even in familiar and social intercourse. Dr. Donne sneers at those who—

" woo in language of the [illegible] bench, scholars, [illegible] hur[illegible]
in the following lines, which may fitly find a [illegible] here, as there is some reason to believe they were suggested to Donne by his being present at the performance of Ignoramus.—

"——————— I have been
In love ever since *tricesimo* of the queen.
*Continual claims* I have made, *injunctions* got
To *stay* my rival's *suit*, that he should not
Proceed, spare me; in *Hilary term* I went,
You said, if I return'd next size in Lent,
I should be in *remitter* of your grace;
In th' interim my letters should take place
Of *affidavits.*————"

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## APPOINTMENT OF COMPETENT JUDGES.

[Vol. II, page 185.]

Not many years ago a judge was appointed to preside in one of our courts, much to the annoyance of the profession, who considered that the minister might have made a better use of his patronage. His conduct for some time after his appointment, fully justified the apprehensions previously entertained. The reckless manner in which he decided important and difficult cases, and his frequent disregard of previous decisions created much observation. Once after he had delivered judgment in a particular case, a king's counsel observed, in a tone loud enough to reach the bench, "Good heavens! every judgment of the court is a mere toss-up." "But *heads* seldom win," observed a learned barrister sitting behind. On another occasion this wit proposed the following riddle for solution, "Why does ——(the judge in question) commit an act of Bankruptcy every day?" The answer was, "Because he daily gives a judgment without consideration."

## NOTES.

### REFERENCES TO MASTERS IN CHANCERY

[Vol. [illegible], page 187.]

The first reference to a master in chancery is said to have taken place in the time of Sir Christopher Hatton from his ignorance of law, but there are instances much earlier than that period to be found recorded. These references appear to have formed one of the great chancery grievances in former times. Bacon amongst his Apophthegms says, "They feigned a tale principally against doctors' reports in Chancery; that Sir Nicholas Bacon when he came to heaven's gate was opposed touching an unjust decree which had been made in the chancery. Sir Nicholas desired to see the order, whereupon the decree was drawn up, and finding it to begin *veneris, &c*, why (saith he) I was then sitting in the star chamber; this concerns the Master of the Rolls, let him answer it. Soon after came the Master of the Rolls, Cordal; who died indeed a small time after Sir Nicholas Bacon; and he was likewise stayed upon it; and looking into the order, he found, that, upon the reading of a certificate of Dr. Gibson, it was ordered, that his report should be declared, and so he put it upon Dr. Gibson and there it stuck is murdering."

A watchmaker having a cause depending before Lord Keeper Wright, sent him a handsome clock a few days before it came on to be heard; Sir Nathan returned the time-piece, with the observation, "I have no doubt of the goodness of the piece but *it has one motion in it too much for me!*"

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### THE DEVIL AND THE LAWYERS.

[Vol. [illegible], page 239.]

To the various "calumnies" from time to time thrown out against the lawyers may not the following verily be ranked? "When I lived at Rome," says Carr in his Remarks, "goeing with a Romance to see some antiquityes, he showed me a cha-

scholars,

[illegible]dicated to one St. Evona, a lawyer of Brittany, hur[illegible] [illegible]to Rome to entreate the pope to give the [illegible]ers of [illegible] a patron, to which the pope replied that he knew of no s[illegible] but what was disposed of to o[illegible] [illegible]ssions, at which St. Evona was very sad, and earnestly beg[illegible] of the pope to think of one for them; at the last the pope p[illegible]posed to St. Evona that he should goe round the church of St. Jol[illegible] de Latera, blindfould, and, after he had said so many Ave Marias, that the first saint he lay'd hold of should be his patron which the good old lawyer willingly undertook, and at the end of his Ave Maryes, he stopt at St. Michael's altar, where he lay'd hold of the *divell* under St. Michael's feet, and cried out 'this is our saint, let him be our patron;' so being unblindfolded and seeing what a patron he had chosen, he went to his lodgings so dejected that, in a few months after, he died, and coming, to heaven's gates knock't hard; whereupon St. Peter asked 'who it was that knock[illegible] so bouldly,' he replied that he was St. Evona the advoca[illegible]. 'Away, away,' said St. Peter, 'there is but one advocate in heaven, there is no room for you lawyers;' 'O but,' said Evona, 'I am that honest lawyer who never tooke fees on both sides, or ever pleaded in a bad cause, nor did I ever set my naibours together by the ears, or lived by the sins of the people.' 'Well then,' said St. Peter,' 'come in.' This news coming down to Rome, a witty poet [illegible]rit upon St. Evona's tomb these words: 'St. Evona, un Breto[illegible], Advocat non ladro. Halelulah.' This story" continues Carr, "puts me in mind of Ben Jonson, goeing throw a church in Surry, seeing poore people weeping over a grave, asked one of the women, why they wept! 'Oh!" said shee, 'we have lost our pretious lawyer, Justice Randall, he kept us all in peace and always was so good as to keep us from goeing to law; the best man that ever lived.' 'Well,' said Ben Jonson, 'I will send you an epitaph to write upon his tomb,' which was

'God works wonders now and then,
Here lyes a lawyer, an honest man.'"

# EPILOGUE.

"For a farewell to our jurisprudent I wish unto him the gladsome light of jurisprudence, the loveliness of temperance, the stability of fortitude, and the solidity of justice.

Co. Litt. 395.